

Exhibit B

Rebecca E. Kuehn
February 28, 2024

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

BONNIE MAGALLON,

Plaintiff,

vs.

ROBERT HALF INTERNATIONAL, INC.,

Defendant.

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No. 6:13-cv-01478-SI

VIDEO-RECORDED DEPOSITION OF REBECCA E. KUEHN
February 28, 2024, 10:00 a.m.
Location of Witness: Hudson Cook, LLP
Pages 1 - 109
(REPORTED REMOTELY)

* Stenographic Reporter *
Taylor Smith
tjmsmith33@gmail.com Job No. 6557307-001

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February 28, 2024

A P P E A R A N C E S

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1 ALSO PRESENT:

2 Ms. Sarah Crooks, Esq.

3 Mr. Jim Soto - Videographer

4 Ms. Rayne Bennett - Paralegal

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I N D E X

WITNESS

REBECCA E. KUEHN

EXAMINATION

PAGE

BY MR. SOUMILAS

6

BY MS. PASCHAL

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E X H I B I T S

EXHIBIT

DESCRIPTION

PAGE

NO.

1

Docket 147

20

2

1/5/24 Expert Report

23

3

RHI Policy, "Handling Derogatory
Results"

29

4

2/2/24 Expert Rebuttal Report

50

INSTRUCTION NOT TO ANSWER:

28:19

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P R O C E E D I N G S

THE VIDEOGRAPHER: Good morning. We are now on the record.

Participants should be aware this proceeding is being recorded and as such all conversations held will be recorded unless there is a request and agreement to go off the record. This is the remote video-recorded deposition of Rebecca Kuehn.

Today is Wednesday, the 28th of February, 2024. The time is now approximately 10:00 a.m. Eastern, 3:00 p.m. UTC. We are here in the matter of Magallon versus Robert Half International, Inc.

My name is James Soto, remote video technician, on behalf of U.S. Legal Support. I will now read the statement for remote proceedings into the record.

The attorneys participating in this deposition acknowledge the court reporter is not physically present in the deposition room and that she will be reporting this deposition remotely. They further acknowledge that in lieu of an oath administered in person, she will administer the oath remotely.

Parties and their counsel consent to this arrangement and waive any objections to this manner of reporting. Please indicate -- indicate your agreement

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1 by stating your name and your agreement on the record.

2 MR. SOUMILAS: For the plaintiff, Bonnie
3 Magallon and the certified class, this is John Soumilas,
4 and we agree.

5 MS. PASCHAL: For the defendant, Robert Half,
6 this is Evangeline Paschal from the law firm of Hunton
7 Andrews Kurth, and we agree.

8 THE VIDEOGRAPHER: Thank you.

9 Will the court reporter, Taylor Smith, also on
10 behalf of U.S. Legal Support, please enter -- please
11 administer the oath.

12 THE REPORTER: Good morning, Ms. Kuehn, if I
13 could have you raise your right hand, please. Thank
14 you.

15 The testimony you are about to give today, do
16 you swear or affirm that it will be the truth, the whole
17 truth, and nothing but the truth?

18 THE WITNESS: I do.

19 THE REPORTER: Thank you so much.

20 Counsel?

21 REBECCA E. KUEHN,
22 having been first duly sworn, testified as follows:

23 E X A M I N A T I O N

24 BY MR. SOUMILAS:

25 Q. Good morning, Ms. Kuehn.

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1 A. Good morning.

2 Q. My name is John Soumilas. I am one of the
3 attorneys for Bonnie Magallon and a certified class in
4 the case of Magallon versus Robert Half International.
5 And through agreement of the party's counsel, I'm here
6 to take your deposition remotely today via Zoom, and
7 that is because you have been identified by Robert
8 Half's counsel as a potential expert testifying --
9 testifying expert for the trial that's scheduled to take
10 place later this year.

11 Do I understand that correct?

12 A. That's correct.

13 Q. Where are you joining us today from, Ms. Kuehn?

14 A. My office in Washington DC.

15 Q. And is anyone there with you at your office
16 today?

17 A. No.

18 Q. Do you have any material with you concerning
19 this case in your office?

20 A. No.

21 Q. Okay. I know you produced for us in this
22 matter an expert report on behalf of Robert Half dated
23 January 5, 2024, and also a rebuttal expert report dated
24 February 2, 2024.

25 If you want to access those documents to

1 refresh your recollection or just take a look at them,
2 we'll make those available to you on the screen, and
3 give you control to scroll to whatever page you want,
4 but I will ask you to look at those official documents
5 once we mark them as exhibits opposed to any other copy
6 that you might have available to you in your office.

7 Okay?

8 A. Okay.

9 Q. We might look at some other documents today as
10 well, and we'll use the same process of displaying them
11 for everyone on the screen, marking them as exhibits in
12 today's proceeding, and giving you control if you want
13 to scroll within any particular area within the
14 document.

15 Do you understand that?

16 A. Yes.

17 Q. All right. And, Ms. Kuehn, you've been an
18 expert witness testifying in other matters; correct?

19 A. Correct.

20 Q. And you're also a practicing attorney; am I
21 correct?

22 A. Yes.

23 Q. So you know that today's proceedings are under
24 penalty of perjury, and you took an oath just like the
25 one if we were at trial today in this case in front of a

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1 judge and jury.

2 Do you understand that?

3 A. Yes.

4 Q. All right. Any reason why you can't give me
5 your best and truthful testimony today?

6 A. No reason I can think of.

7 Q. Very well. Now, you are an active lawyer -- as
8 I said, you're -- you're licensed currently?

9 A. Yes.

10 Q. In which jurisdictions are you licensed?

11 A. In the District of Columbia, Maryland, and
12 Virginia.

13 Q. And how long have you been a practicing
14 attorney, Ms. Kuehn?

15 A. Since 1994.

16 Q. I understand that you said you're at your
17 office. That's at the Hudson Cook law firm in
18 Washington, DC?

19 A. Yes.

20 Q. And how long have you been employed at Hudson
21 Cook?

22 A. For about eight years.

23 Q. And you're a partner there; correct?

24 A. Yes.

25 Q. All right. I also understand that for purposes

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1 of this case, you were provided access to all of the
2 materials in the case, including the documents, the
3 pleadings, the parties' briefs, the court's orders, as
4 listed in Exhibit A of your expert report; am I correct?

5 A. Yes.

6 Q. Including the deposition transcripts; correct?

7 A. Yes.

8 Q. Now, I know you said you were provided access
9 to all of the material, but you're aware that this case
10 has a lengthy history, to say the least, over ten years;
11 correct?

12 A. That is correct.

13 Q. And there's quite a lot of material including
14 thousands of pages of documents produced by the
15 defendant in this case.

16 You're aware of that?

17 A. Yes.

18 Q. And there's over 170 docket entries on the
19 court's docket -- some of them quite complex with
20 lengthy briefing and many exhibits.

21 You're aware of that?

22 A. Yes.

23 Q. Did you review all this material in preparing
24 for your assignment in this case, or were you simply
25 provided access to it?

1 A. I was provided access, and I reviewed materials
2 that I determined were relevant to the information I
3 needed to know for the issues I've been asked to testify
4 upon.

5 Q. Would you judge how much of the case file, if
6 you will, did you review? Was it 10 percent?
7 50 percent? 90 percent?

8 A. I couldn't begin to guess. My report, though,
9 does identify the particular items that I reviewed and
10 relied upon through citations.

11 Q. Would I be correct in concluding that you
12 reviewed the materials before you started preparing any
13 opinions about the case?

14 A. Yes.

15 Q. When were you first engaged about -- starting
16 to work on this case?

17 A. In March of 2023.

18 Q. And who engaged you? Was it the defendant,
19 Robert Half International, or one of its attorneys?

20 A. I was contacted by Mr. Quackenboss.

21 Q. So one of the company's lawyers; right?

22 A. Yes.

23 Q. And when in relation to the first contact did
24 you start receiving or getting access to documents in
25 the case?

1 A. It was sometime -- March or April of 2023. I
2 think there was some issues in getting the full
3 electronic file, but I started getting materials around
4 that time.

5 Q. All right. Do you bill at an hourly rate for
6 the work you do in this case?

7 A. Yes.

8 Q. And I understand your hourly rate is \$835 per
9 hour; is that correct?

10 A. That's correct.

11 Q. Do you bill the law firm or the defendant
12 directly?

13 A. Can't recall who the invoices are sent to, but
14 the bills are sent for the client.

15 Q. And the client would be Robert Half?

16 A. Correct.

17 Q. Do you keep detailed invoices of your time?

18 A. Yes.

19 Q. How much time, approximately, did you take
20 reviewing the materials that were made accessible to you
21 in this case and that you list as Exhibit A to your
22 report?

23 A. In all -- I can't recall specifically, but
24 probably at least ten hours -- five to ten hours in
25 looking at materials.

1 Q. And how much time total in terms of hours did
2 you spend as an expert witness on behalf of Robert Half
3 in this case reviewing materials, preparing the report,
4 preparing for today, anything else you did for them?

5 A. Probably, if I were to estimate, around 25,
6 30 hours.

7 Q. And that would be total?

8 A. Total. Maybe more than that, because I haven't
9 prepared any invoices for this past month.

10 Q. All right. Within the last month, did you do
11 anything for the case other than preparing to give
12 testimony today?

13 A. Well, it's February, so my rebuttal report was
14 written on February 2nd, so I finished my rebuttal
15 report on February 2nd.

16 Q. Got it. So approximately how many hours for
17 the rebuttal report?

18 A. That, can I can't recall.

19 Q. And I take it you prepared to give testimony
20 today?

21 A. Yes.

22 Q. How many hours did you prepare for today?

23 A. I think about five hours total -- reviewing
24 materials, meeting with counsel.

25 Q. And when you say "meeting with couns- --

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1 counsel," would that be Ms. Paschal, who is defending
2 the deposition for Robert Half today?

3 A. Yes.

4 Q. Was there anybody else present during those
5 meetings?

6 A. Yes, Mr. Quackenboss.

7 Q. So other than preparing for the deposition
8 today and doing the rebuttal report -- preparing the
9 rebuttal report, did you do any other work for Robert
10 Half in February of this year?

11 A. No.

12 Q. Have you ever done any work in any capacity for
13 Robert Half in the past?

14 A. No.

15 Q. When you accepted this assignment, did you
16 check your firm's records for conflicts?

17 A. Yes.

18 Q. Did you check whether anyone else at your firm
19 had done any type of billable work for Robert Half in
20 the past?

21 A. Yes.

22 Q. And what did you find?

23 A. Did not find any records that anyone had worked
24 for Robert Half in the past.

25 Q. And have you been engaged by counsel,

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1 Mr. Quackenboss, for another client of his to do any
2 work in the past?

3 A. No.

4 Q. How about Ms. Paschal, who's here today?

5 A. No.

6 Q. Okay. So this is the first time you working
7 with them?

8 A. Yes.

9 Q. I just did some quick math on my phone. It
10 sounds like, given your \$835 per hour hourly and the
11 hours you just mentioned to me, would -- a correct
12 estimate is that you spent in the neighborhood of \$25-
13 to \$30,000 of billable time on this assignment for this
14 case?

15 A. I've always been told not to do math in public,
16 but that sounds about right.

17 Q. Okay. And, like, Ms. Kuehn, you have the
18 records if we need to go back to review them to -- to
19 get a more detailed accounting; correct?

20 A. Yes. Yes.

21 Q. All right. Now, there is quite a bit of
22 material in this case, as I mentioned. It's a lengthy
23 history. So I want to go over some of it just to make
24 sure that this is part of the material that you reviewed
25 and that we're on the same page as far as the case is

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1 concerned.

2 So you are aware that Ms. Magallon brought a
3 lawsuit against Robert Half alleging that she did not
4 receive from Robert Half timely pre-adverse action
5 notification in connection with a job where she was a
6 candidate for placement; correct?

7 A. Correct. Correct.

8 Q. Okay. In fact, Ms. Magallon said not only was
9 the notice not timely, she claims she never got it at
10 all. Ever.

11 Do you understand that?

12 A. Yes. Yes.

13 Q. All right.

14 THE WITNESS: If I may -- I'm sorry. If I may,
15 there's -- starting to get an echo and feedback. I
16 don't know if that's something we can address.

17 MR. SOUMILAS: I'm sorry. I --

18 THE WITNESS: It seems to have stopped now.
19 Sorry.

20 MR. SOUMILAS: I don't know don't know if I was
21 moving papers or something, but sometimes if there's
22 extra microphones on, that happens. I'll -- I'll try
23 not to fidget.

24 BY MR. SOUMILAS:

25 Q. So going back to the case, you know, I

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1 mentioned "pre-adverse action notification." That's a
2 requirement under the federal law of the Fair Credit
3 Reporting Act, which we also refer to as the FCRA;
4 correct?

5 A. Correct. When you're using consumer reports in
6 connection with employment decisions.

7 Q. And you are familiar with this area of law
8 under the FCRA, the pre-adverse actions requirements.
9 It's part of your practice for many years; correct?

10 A. Yes.

11 Q. Sometimes we also refer to this pre-adverse
12 action notification as the "b(b)(3)" notice. You've
13 heard of that?

14 A. That's not a term I generally use, but I
15 understand what you mean.

16 Q. Okay. And you do understand that it is a
17 requirement that comes under a section of the Fair
18 Credit Reporting Act as Section 1681b(b)(3); correct?

19 A. Correct.

20 Q. All right. So Ms. Magallon brought this claim
21 saying that she just did not timely receive this notice
22 or -- or receive it at all and that Robert Half was
23 required, in her view, to -- to provide it to her?

24 MS. PASCHAL: I object to the form. Objection
25 to form.

1 BY MR. SOUMILAS:

2 Q. Do you understand that claim in -- in that --
3 in that regard -- her claim to be as I described it?

4 A. Sounds consistent with what I read in the
5 complaint, yes.

6 Q. Okay. And you also understand also that
7 Ms. Magallon brought this claim not just for herself but
8 for a class of who she believed to be similarly situated
9 job candidates?

10 MS. PASCHAL: Objection. Calls for
11 speculation.

12 A. I understand this is a -- a class action
13 lawsuit.

14 BY MR. SOUMILAS:

15 Q. Okay. Are you aware that the court in this
16 case issued a order certifying the case as a class
17 action?

18 A. Yes.

19 Q. And finding Ms. Magallon as a typical class
20 member and as the class representative for this class?

21 A. I don't specifically recall the exact language
22 of the opinion, but that sounds accurate.

23 Q. Typically, when you certify a case as a class
24 action, you have to have a class representative;
25 correct?

1 MS. PASCHAL: Objection. Foundation.

2 A. Not been asked to opine on sort of class
3 certification issues generally, but yes, that's my
4 understanding of what the rules require.

5 BY MR. SOUMILAS:

6 Q. Right. And you are aware that the court
7 certified this case as a class action years ago; right?

8 A. Yes.

9 Q. Are you aware that the parties had some
10 disagreements as to how many other job candidates should
11 be members of the class?

12 A. Only in a general sense.

13 Q. All right. Did you review any of the briefing
14 on that subject that the parties filed on the docket in
15 this case on what the proper class population should be?

16 A. I may have scanned through it, but I didn't
17 look at it for that issue.

18 Q. Do you have an understanding that the court
19 made a determination that -- what we've called the
20 "updated" class list of 2,363 individuals should be the
21 class population here?

22 A. I don't recall specifically how many
23 individuals are in the class that was certified.

24 Q. All right. I -- I'm just going to show you a
25 document that's on the docket that might refresh your

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1 re- -- recollection on this issue.

2 MR. SOUMILAS: We'll call it Kuehn 1 for
3 purposes of today.

4 Ms. Bennett, would you pull up Docket 147 from
5 this case.

6 (Exhibit 1 marked/introduced.)

7 BY MR. SOUMILAS:

8 Q. Ms. Kuehn, have you seen this document before?
9 It said -- off the PACER docket for this case said
10 docket number 147.

11 A. I have not seen this particular document that I
12 recall, but I have reviewed the PACER docket list and
13 would have seen it as part of that.

14 Q. Would you agree with me that, according to this
15 minute entry, the court indicates that all 2,363
16 individuals from the plaintiff's updated class list
17 shall be included in the class list?

18 A. That is what the document says.

19 Q. All right. Well, if I'm referring to the class
20 today, I'm referring to this population of two hundred
21 -- I'm sorry -- 2,363 job candidates who are on the
22 updated class list. Okay?

23 A. Okay.

24 Q. Are you aware that, as the case progressed, the
25 defendant filed what's called a "motion for summary

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1 judgment arguing that -- that Robert Half did not
2 violate the pre-adverse action requirements of the Fair
3 Credit Reporting Act?

4 A. Yes, I recall that.

5 MR. SOUMILAS: Ms. Bennett, you can pull this
6 exhibit down.

7 BY MR. SOUMILAS:

8 Q. And you -- are you aware that, again, the court
9 ruled that Robert Half's motion shall be denied in this
10 regard?

11 A. Yes, that's my recollection.

12 Q. And are you also aware that the court did not
13 rule and found that, not only might the case proceed to
14 trial, but that it might pro- -- it may proceed to trial
15 for a willful violation by Robert Half of the
16 pre-adverse action requirements of the FCRA?

17 MS. PASCHAL: Objection to form.

18 A. My recollection is the court denied summary
19 judgment on that issue. So, yes, the issue is
20 proceeding to trial.

21 BY MR. SOUMILAS:

22 Q. Including an issue of a willful violation of
23 the FCRA's pre-adverse action requirements; correct?

24 A. That's my recollection, yes.

25 Q. Okay. As a lawyer and as an expert assigned to

1 this matter, do you disagree with the court's rulings in
2 this case in any respect? Do you just think that the
3 judge got it wrong somehow?

4 MS. PASCHAL: Objection. Compound.

5 BY MR. SOUMILAS:

6 Q. You could answer.

7 A. With respect to the judge's opinion, there were
8 some discussion of the policies and procedures that
9 Robert Half had in place and whether or not they --
10 their process was consistent with those policies and
11 procedures.

12 It's my recollection that was informative to
13 the court as to whether or not to -- whether or not
14 there was a disagreement on an issue of fact for trial.
15 When I reviewed that, I have a different opinion of the
16 policies and procedures and the fact that Robert Half's
17 practices varied from those procedures than that of the
18 judge. That's what I recall when I read his opinion.

19 Q. Okay. In fact, your opinion is that Robert
20 Half's practices do not violate the Fair Credit
21 Reporting Act's pre-adverse action requirements;
22 correct?

23 MS. PASCHAL: Objection. Calls for ultimate
24 legal conclusion.

25 A. My opinion is that Robert Half's practices, as

1 I have learned from the record in this case, are
2 consistent with industry standards for the provision of
3 a pre-adverse action notice.

4 BY MR. SOUMILAS:

5 Q. Let's pull up your expert report both --
6 January 5, 2024.

7 MR. SOUMILAS: We'll call it Kuehn 2 for
8 purposes of today.

9 (Exhibit 2 was marked/introduced.)

10 MR. SOUMILAS: And, Ms. Bennett, I'd like you
11 to go to page 15 of the report once you have it up.

12 BY MR. SOUMILAS:

13 Q. All right. And, Ms. Kuehn, I'd like to direct
14 your attention to the end of the second full paragraph
15 on page 15, please.

16 MR. SOUMILAS: I don't think this is the
17 correct page, Ms. Bennett. Page 15 as -- on the report.
18 That's 16 that you're on.

19 BY MR. SOUMILAS:

20 Q. All right. May I direct your attention to the
21 last sentence of the second full paragraph -- the one
22 that begins "Further, although."

23 And there at the very end of the paragraph you
24 say, "Thus, even if RHI's" -- which we're using as an
25 abbreviation for Robert Half International -- if it's

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1 "practice of deferring the transmittal of the
2 pre-adverse action notice until after legal review was
3 not in accordance with RHI's written policy, it was not
4 a violation of the FCRA itself?"

5 Do you see that?

6 A. Yes.

7 Q. So you believe that the practice that RHI
8 engaged in was not a violation of the FCRA?

9 MS. PASCHAL: Objection to the extent it calls
10 for ultimate legal conclusion.

11 A. Well, the sentence here is focused on whether
12 or not the fact that the written policy -- which says to
13 send the pre-adverse action immediately. Whether or not
14 RHI's failure to -- you know, the fact that its practice
15 was different than what the written documentation was,
16 did that constitute a violation of the Fair Credit
17 Reporting Act?

18 And the sentence, which I think speaks for
19 itself, says, basically, even if RHI's practice wasn't
20 to send it immediately but was to send it after legal
21 review, the fact that it didn't comply with its written
22 policy wasn't -- isn't a violation of the FCRA.

23 BY MR. SOUMILAS:

24 Q. Would you say that you disagree with the
25 court's summary judgment decision in this case, which

1 found that that practice -- very practice -- could be a
2 violation of the FCRA, and it could even be a willful
3 violation?

4 A. It's my understanding that the court denied
5 summary judgment on that at -- which requires this issue
6 to be an issue for trial.

7 Q. But if it was not a violation of the FCRA, the
8 court would have granted summary judgment to Robert
9 Half. Would -- is that not how it works?

10 MS. PASCHAL: Objection. Foundation. It's
11 beyond the scope of what she's being offered for.

12 A. In summary judgment, it's my understanding that
13 the court makes a determination whether there's an issue
14 of fact such that the case should go to trial, and the
15 court found issues of fact based on the variants between
16 Robert Half's procedures and what -- the practice that
17 it actually engaged in for purposes of whether or not to
18 correct summary judgment.

19 BY MR. SOUMILAS:

20 Q. I'm just trying to understand. Do you agree
21 with the court's decision in this regard, or do you
22 disagree with it?

23 MS. PASCHAL: Objection. Beyond the scope of
24 her report.

25 A. Well, I haven't been asked to -- whether or not

1 I agree with a judge. But the issue here is, does the
2 fact that Robert Half have practice that's at variance
3 with a written policy that it has in place, does that
4 itself equate to a violation of the FCRA? I -- that's
5 -- that's the point I was making in this paragraph.

6 BY MR. SOUMILAS:

7 Q. Right. So I know you -- Robert Half hasn't
8 asked you to opine on that. But I'm trying to
9 understand the underpinnings of your opinion here. And
10 you are a lawyer. You've read this material. You told
11 me you reviewed it. So I'm trying to understand whether
12 you're in disagreement with the court rulings in this
13 case in some respect.

14 MS. PASCHAL: Objection. Beyond the scope of
15 her report.

16 A. Well, without going through the opinion line by
17 line, I can't say what I agree or don't agree with. I'm
18 just telling you what my opinion here is in the case,
19 which is the fact that Robert Half had a written policy
20 but had some practices that were at variance within
21 where they evolved to basically have this legal review
22 before they decided to send a pre-adverse action notice.

23 The failure to comply with a written policy
24 isn't by itself a violation of the FCRA.

25 BY MR. SOUMILAS:

1 Q. Right. And you think the practice as it was
2 actually carried through is also not a violation of the
3 FCRA?

4 A. That's correct. I believe it's consistent with
5 industry standards and practice.

6 Q. All right. We'll -- we'll get into that --
7 what that means in a moment.

8 But why don't we go back to your preparation to
9 give testimony today? You said you spent around five
10 hours with counsel?

11 MS. PASCHAL: Objection. Mischaracterizes
12 testimony.

13 A. No. I spent five hours getting prepared. Some
14 of that was meeting with counsel.

15 BY MR. SOUMILAS:

16 Q. Okay. When was that, the five hours?

17 A. The five hours were over the last -- the course
18 of the last couple days.

19 Q. And some of it was preparing on your own, and
20 then some of it was meeting with Robert Half's counsel?

21 A. Yes.

22 Q. When did you meet with counsel?

23 A. Monday.

24 Q. How long was that meeting?

25 A. Probably around two and a half hours.

1 Q. Was it in person? by Zoom? over the
2 telephone? How did you do it?

3 A. In person.

4 Q. Was anybody else there?

5 A. Other than myself, Ms. Paschal, and
6 Mr. Quackenboss attended by video.

7 Q. So you said other than you and counsel. Was
8 there some -- anybody else there?

9 A. No.

10 Q. Okay. And the rest of the material -- I mean
11 the rest of the time that you spent preparing, you
12 reviewed material?

13 A. Yes.

14 Q. And did you do that by yourself, or did you
15 have assistance from anybody?

16 A. I did that by myself.

17 Q. What material did you review by yourself?

18 MS. PASCHAL: I'm going to instruct the witness
19 not to -- I'm going to object and instruct the witness
20 to not answer with respect to any materials she reviewed
21 as an outcome of our discussions during preparation.
22 It's protected by work product.

23 MR. SOUMILAS: Well, okay, then, but -- but --
24 but I thought I laid the foundation, but -- but I'll do
25 it again.

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1 BY MR. SOUMILAS:

2 Q. Ms. Kuehn, did I understand you correctly that
3 you reviewed the material before you met with counsel on
4 Monday or after?

5 A. Both.

6 Q. Okay. How -- how much time before your meeting
7 with counsel?

8 A. I can't specifically recall.

9 Q. All right. And you just on your own started
10 reviewing some material to prepare for this deposition
11 since you knew it was coming up?

12 A. Yes.

13 Q. What did you review?

14 A. I reviewed my reports. I reviewed the reports
15 of Plaintiff's experts primarily.

16 Q. Anything else?

17 A. Not that I can recall.

18 Q. I want to show you a document that we'll mark
19 as Kuehn 3 for purposes of today's proceedings. It was
20 used as an exhibit in the class certification motion in
21 this case, Docket 33-3. It is an RHI policy.

22 (Exhibit 3 marked/introduced.)

23 BY MR. SOUMILAS:

24 Q. And have you seen this document in preparing
25 for your deposition? It's called "Handling Derogatory

1 Results."

2 MS. PASCHAL: I'm going to object and instruct
3 the witness not to divulge anything that would reflect
4 upon what we did as preparation or as a result of our
5 conversation about preparation.

6 BY MR. SOUMILAS:

7 Q. Could you answer the question, Ms. Kuehn?

8 A. I did not specifically review this document in
9 preparation for the deposition, but it does appear to be
10 a document that's in the record that I reviewed in
11 preparation of my reports.

12 Q. Okay.

13 MR. SOUMILAS: We could put it down.

14 BY MR. SOUMILAS:

15 Q. Now, as we said at the get-go, this is a case
16 involving the pre-adverse action requirements of the
17 Fair Credit Reporting Act or FCRA. Have you ever been
18 an expert witness in a case involving a claim that the
19 pre-adverse action notification of the FCRA was not
20 provided?

21 A. I have not.

22 Q. Then could I take that from your -- from that
23 answer that you've never been recognized as an expert in
24 court by any court in the pre-adverse action notice
25 case?

1 A. That's correct.

2 Q. All right. More broadly, have you been
3 qualified to testify as an expert in court in any type
4 of a case?

5 A. Yes.

6 Q. Okay. How many times?

7 A. I have been qualified as an expert twice: one
8 in a confidential arbitration and most recently in
9 federal court in Seattle, Washington.

10 Q. Okay. And why don't we set the confidential
11 arbitration proceeding aside because it seems that's the
12 type of document -- the type of case that we can't get
13 access to the documents. But I take it the federal
14 proceeding was in a -- in an open court; right?

15 A. That's correct.

16 Q. What was the -- what was the nature of that
17 case?

18 A. It was a lawsuit against a consumer reporting
19 agency related to accuracy.

20 Q. All right. Did that case involve medical
21 records?

22 A. A prescription drug history and medical
23 history, yes.

24 Q. It did not involve any type of employment
25 prescreening of -- of job candidates; correct?

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1 A. That's correct.

2 Q. Have you ever been qualified by a state or
3 federal court to give your opinion in any type of a
4 case, whether FCRA or not, involving employment
5 practices?

6 A. No.

7 Q. All right. Other than the case in Seattle
8 involving prescription history and medical records, have
9 you ever been qualified by any court, state or federal,
10 to give your expert opinion in any matter?

11 A. In any court proceeding? No.

12 Q. Right. Conversely, have you ever been found by
13 a court, state or federal, to be unqualified as an
14 expert to give your opinion at trial?

15 A. Not to my knowledge.

16 Q. If we go back to your expert report, please.
17 That's Kuehn 2.

18 MR. SOUMILAS: And if we could, please go to
19 Exhibit B. It's at the end of the report immediately
20 after Exhibit A.

21 BY MR. SOUMILAS:

22 Q. And there is a list of additional information
23 that you leaned on, including publications by you;
24 correct?

25 A. No, that's not correct. This is a list of

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1 publications I've authored as required by the disclosure
2 rules for expert disclosures. I didn't say that I
3 leaned on those. That was your word.

4 Q. Okay. I'm sorry. So this additional
5 information, you're just simply telling us your
6 publications. It's not as if you relied on any of these
7 publications to form your opinions in this case; is that
8 correct?

9 A. That's correct.

10 Q. Okay. Thank you. Are any of these
11 publications listed in Exhibit B specific to the
12 pre-adverse action requirements for job screening under
13 the Fair Credit Reporting Act?

14 A. If I can have control of the document.

15 Q. Yes.

16 MR. SOUMILAS: Ms. Bennett, would you please
17 give the witness control.

18 MS. BENNETT: You do -- I'm sorry. Yes, if you
19 just double-click, you'll be able to navigate.

20 THE WITNESS: Okay.

21 A. The only one -- none of these publications talk
22 about employment with the exception, potentially, of the
23 Year in Review article from 2021. The FCRA appellate
24 decisions that may be covered in there that might have
25 it. I don't recall specifically, though.

1 BY MR. SOUMILAS:

2 Q. All right. If we go back to Exhibit A of your
3 report. It's just a previous page from the one you're
4 looking at. That's where you can see materials provided
5 or available to the expert.

6 Oh, I'm sorry -- let's see if we can get the
7 correct exhibit back up there.

8 MR. SOUMILAS: It's Exhibit Kuehn 2. It's the
9 material provided or available to the expert. Okay.
10 There we are.

11 BY MR. SOUMILAS:

12 Q. Ms. Kuehn, did I understand your testimony
13 earlier today correctly that you didn't rely on all of
14 these documents in formulating your opinions in this
15 case? You just had it -- all the documents available to
16 you if you wanted to access them; is that correct?

17 A. That's correct.

18 Q. If I wanted to get at the sources -- the
19 documents that you relied on and information you relied
20 on to form your opinions, would we need to look at your
21 expert report itself and what you cite within that
22 report?

23 A. Yes. It's my intention when I prepare a report
24 to cite to specific parts of the record that I relied
25 upon or specifically reviewed for my opinion, and so the

1 -- those citations are throughout my report.

2 Q. And, inversely, can I conclude that if you
3 didn't cite to a specific source or document or
4 transcript in your report itself, then that did not form
5 the basis of your opinion?

6 A. That would be a reasonable assumption. I don't
7 want to say definitively because there may have been
8 some materials that I considered and didn't rely on, so
9 I'm just trying to make sure I'm answering you
10 truthfully.

11 Q. It says here, for example, that you had
12 available "All documents produced to the Plaintiffs."

13 I -- I take it you mean produced by Robert Half
14 and its attorneys in this case; correct?

15 A. Yes.

16 Q. So are you aware that there were many thousands
17 of records of potential class members that were turned
18 over during this phase of the case where the parties
19 were disagreeing about what the correct number of class
20 members should be? Did you review those?

21 A. I did not end up reviewing those documents.
22 They were available if I wanted to, but I did not.

23 Q. Okay. You do say here in your list that you
24 had interviews with a Kathleen Cattani -- I hope I'm
25 pronouncing that correctly, C-A-T-T-A-N-I -- and a Ted

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1 Mawla, M-A-W-L-A, and you have that as December 28,
2 2023.

3 Do you see that?

4 A. Yes.

5 Q. Okay. I take it both of these interviews were
6 conducted on that day?

7 A. Yes.

8 Q. They were conducted by you?

9 A. Yes.

10 Q. Was it that -- these two folks together or one
11 at a time?

12 A. I interviewed them together.

13 Q. Okay. And who are these individuals, to your
14 knowledge?

15 A. These are individuals in the legal department
16 at Robert Half who are the types of folks who conduct
17 legal reviews.

18 Q. All right. Was there anybody else there during
19 your interview?

20 A. Yes, counsel for Robert Half.

21 Q. Who specifically?

22 A. Outside counsel and -- as well as internal
23 counsel.

24 Q. And was this an in-person interview, or was it
25 by -- by Zoom like we're doing today, or telephone?

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1 A. By Zoom.

2 Q. Was there anybody else present on this Zoom
3 interview?

4 A. Aside from counsel and Ms. Cattani and
5 Mr. Mawla, no.

6 Q. How long did the interview last?

7 A. I don't specifically recall. Probably around
8 an hour.

9 Q. Did you create a transcript of the interview?

10 A. No.

11 Q. Did you take notes?

12 A. Yes.

13 Q. Did you keep the notes?

14 A. Yes.

15 Q. Beginning with Kathleen Cattani, is she an
16 attorney?

17 A. Yes.

18 Q. She's an in-house attorney at Robert Half?

19 A. Yes.

20 Q. How long has she been working in that capacity
21 for Robert Half?

22 MS. PASCHAL: Objection. Foundation.

23 A. I can't specifically recall. I do recall
24 asking her, and my recollection was for quite a while.

25 BY MR. SOUMILAS:

1 Q. Could you pin that down more definitively, what
2 "quite a while" means?

3 A. I believe over ten years for sure, maybe much
4 longer than that, but I can't recall as I'm sitting here
5 today.

6 Q. Was this part of your assignment in this case?

7 MS. PASCHAL: Objection to form.

8 A. I'm not sure --

9 BY MR. SOUMILAS:

10 Q. Let me try that another way.

11 How did you come about to interview Ms. Cattani
12 and Mr. Mawla as opposed to anybody else or not
13 interviewing anyone at all?

14 A. I had asked in preparation of my report for
15 additional information about the nature of the legal
16 review to understand what factors went into it, what --
17 what the attorneys who reviewed background checks
18 considered when they were doing that process. And these
19 are the two individuals that I ended up speaking to.

20 Q. Did you have a choice to speak to other
21 individuals also who did the same type of work?

22 MS. PASCHAL: Objection to form.

23 A. I had asked for some people who had done this
24 review and had been at the company for a period of time
25 so that I could understand what the process was and how

1 it may have evolved. These are the two people that were
2 identified.

3 BY MR. SOUMILAS:

4 Q. They were identified by counsel?

5 A. Yes.

6 Q. And I take it, then, that Mr. Mawla also is an
7 in-house attorney at Robert Half?

8 A. Yes.

9 Q. And do you have an understanding of how long
10 he's been working for Robert Half in the legal review
11 area?

12 A. I don't specifically recall. I know we
13 discussed it. My recollection, though, is that he, too,
14 has had a fairly long tenure at Robert Half.

15 Q. Why did you feel like you needed to -- to speak
16 with these individuals?

17 A. I wanted to get a better understanding of the
18 nature of the legal review, what issues were considered,
19 and what the process entailed.

20 Q. I take it from your answer that, based on the
21 existing factual record in the case, you couldn't answer
22 some questions that you had about the legal review
23 process, so, therefore, you needed to speak with
24 somebody who actually does it?

25 A. My recollection is there's a fair amount of

1 evidence in the record related to the purpose of the
2 legal review generally. I wanted to have more specific
3 knowledge about what that review consisted of. I also
4 wanted to talk about experiences in conducting the --
5 the legal review, what the outcomes of that were, and
6 how the process worked from the -- from the legal review
7 perspective.

8 Q. Was this -- did you consider interviewing these
9 folks one at a time instead of together?

10 A. I did, but we -- I think we set this up for
11 efficiency so that I could interview them both at the
12 same time.

13 Q. Did you consider interviewing them outside the
14 presence of outside counsel, the -- the lawyers that are
15 defending this case for Robert Half?

16 A. No, it didn't come up. They arranged the --
17 counsel and in-house counsel for Robert Half set up the
18 call, so I didn't -- didn't consider that.

19 Q. All right. We'll get back to that.

20 MR. SOUMILAS: We can take the exhibit down for
21 now.

22 Actually, no. You know what? Let's -- let's
23 keep it up. I'm sorry. Let's -- let's keep that
24 exhibit up at the same page, Ms. Bennett. I'm sorry.

25 BY MR. SOUMILAS:

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1 Q. Is this the complete list of all of the
2 materials provided or made available to you, Ms. Kuehn,
3 for this assignment?

4 A. To the best of my knowledge, yes.

5 Q. Okay. Then could I infer from this list that
6 you did not interview anyone outside of Robert Half
7 about anything?

8 A. Related to this expert report, no.

9 Q. Yes, related to this expert report.

10 A. That's correct.

11 Q. And I take it you also didn't review materials
12 such as pre-adverse action policies from any other job
13 placement agency for purposes of this report?

14 A. That's correct.

15 Q. You didn't review any materials about the
16 policies for pre-adverse action notice from any
17 employers outside of the practices involved here for
18 Robert Half?

19 A. Not specifically in connection with the
20 preparation of this report.

21 Q. And you didn't interview or gather information
22 about how the practices of any other employer or job
23 placement agency may differ from that particular
24 company's written policies with respect to pre-adverse
25 action notice.

1 Would you agree with that?

2 A. Could you restate the first part of that
3 question. I want to make sure I'm answering accurately.

4 Q. Yeah. Let me -- let me lay a foundation a
5 little bit. This might be helpful.

6 Why don't we go back to page 14 of your report?

7 And looking at the first bullet on this page,
8 you note that Robert Half had a written policy that
9 pre-adverse action letters, quote, "must be sent
10 immediately when a background check is returned with a
11 discrepant and/or derogatory result (red or yellow
12 flag)," [as read] closed quotes.

13 Do you see that?

14 A. Yes.

15 MS. PASCHAL: Objection to not reading it
16 accurately.

17 MR. SOUMILAS: Oh, I'm -- I'm sorry if I didn't
18 read it accurately.

19 BY MR. SOUMILAS:

20 Q. Well, I think it says, quote, "must be sent
21 immediately" -- it says "pre-adverse action letters,"
22 quote, "must be sent immediately when a background check
23 is returned with discrepant and/or derogatory results"
24 yell- -- "(red or yellow flag)," end quote.

25 Did I read that correctly?

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1 A. Yes.

2 Q. Okay. And, Ms. Kuehn, would you agree with me
3 that one of the issues in this case is that there's a
4 written policy about sending pre-adverse action letters
5 immediately, but you understand the practice of Robert
6 Half is different. It -- it involves sending these
7 letters after the legal review process?

8 A. Yes, I understand that.

9 Q. Okay. So what I was trying to get at a moment
10 ago is whether you looked at any other cases from any
11 other employers where they have a written policy that
12 says one thing about pre-adverse action notification,
13 but then the actual practice of how they do it or when
14 they do is different.

15 Did you consider that type of a possible
16 scenario for other employers or employment placing --
17 placement services besides Robert Half?

18 A. And that's why I wanted you to restate your
19 question because I think you asked if I specifically
20 reviewed such policies and procedures in connection with
21 the preparation of this report. The answer to that
22 question is no, but I have during the course of my
23 experience and working with Fair Credit Reporting Act,
24 and specifically at the FTC -- been occasion to have
25 investigations where these issues have popped up, where

1 written policies haven't been updated to conform to
2 current practice and current practice differs from what
3 written policies state.

4 Q. Okay. Yeah. Let's be as precise as we can
5 about this. In preparing your opinions in this report,
6 did you gather information, interview people, or do
7 anything outside of Robert Half to determine whether
8 other job placement agencies or employers have a
9 differing practice than what their written policy
10 states?

11 A. Specifically job placement reports? No --

12 Q. Yes.

13 A. -- but I have general knowledge and experience
14 over the years with different types of employers, their
15 written policies, and their practices.

16 Q. Yeah. I understand that part of your current
17 legal practice is to give advice to clients; correct?

18 A. Correct.

19 Q. And without telling me about specific legal
20 advice you gave to any client, do you think generally it
21 is advisable for companies to follow their written
22 practices -- I'm sorry. I'll withdraw that.

23 Do you think it is generally advisable for
24 companies to follow their written policies in actual
25 practice?

1 MS. PASCHAL: Objection to form. Foundation.
2 Beyond the scope of her expert report.

3 A. In my --

4 BY MR. SOUMILAS:

5 Q. You can answer.

6 A. -- in my advice of -- of clients, try to make
7 sure that written policies conform to what they do. We
8 often say, "You want to get credit for the work that you
9 do." There are instances where a poll -- a procedure
10 might change in advance of getting an update to a
11 written policy, or there could be some disconnect, a
12 change in the law, or a change in circumstances that
13 results in a change in practice where the written
14 procedures haven't been updated. But it is generally my
15 advice to try to make sure you're updating your policies
16 and procedures on a regular basis.

17 Q. Okay. For purposes of this report in your
18 opinions, again, did you investigate or review any other
19 job placement agency or employer which has this legal
20 review process before sending out a pre-adverse action
21 notice to job candidates?

22 A. Did I look at another company's procedures or
23 practices in connection with this review?

24 Q. Well -- well, not only procedures or practices,
25 but procedures or practices that are similar to Robert

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1 Half's whereby there is this legal review process before
2 pre-adverse action notice is sent, and at the conclusion
3 of that process, if there's a non-placement
4 determination, then the notice of the pre-adverse notice
5 is sent?

6 A. Not of a staffing agency, per se, but I have
7 worked with clients who are working on processes to
8 comply with the Fair Chance hiring laws that will be
9 adopted through the country which require a specific
10 review of criminal records before making a preliminary
11 determination. Laws have been changed to add some
12 additional processes in various jurisdictions.

13 Q. Okay. So let's just break that down. First of
14 all, did you review any specific company's practice in
15 this respect in preparing your expert report and
16 opinions in this matter?

17 A. No.

18 Q. And then you just said that, you know, you're
19 familiar with that type of a practice as it relates to
20 the Fair Chance laws; correct?

21 A. Yes.

22 Q. Would you explain what that is, please.

23 A. So over the past number of years, a number of
24 jurisdictions have adopted new requirements with respect
25 to the use of criminal records and similar information

1 in employment and hiring.

2 As part of that process, there's been some
3 additional review and notification which -- where you
4 need to make a preliminary determination whether or not
5 that persons suitable for hiring excluding any
6 consideration of criminal records.

7 Some people call that -- some places call that
8 a "conditional offer." At that point, you are permitted
9 as an employer to consider the criminal record
10 background, but you must make it an individualized
11 assessment of those records, applying certain factors
12 depending on the jurisdiction; and then after you make
13 that determination, you're required to provide another
14 notice to the consumer-applicant of your preliminary
15 determination allowing them to have a chance to respond
16 to that preliminary determination.

17 Q. Okay. And I'm sorry. Did you say these Fair
18 Chance laws are state laws?

19 A. State or local. There's some regional
20 jurisdictional laws.

21 Q. And you are aware in this case there is no
22 claim under the Fair Chance laws of any state or local
23 government; correct?

24 A. That's correct.

25 Q. All right. Now, I'm going to go back to where

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1 I was heading with respect specifically to the Fair
2 Credit Reporting Act's pre-adverse action notice
3 requirements.

4 Are you aware generally -- not just for
5 purposes of this report -- but generally of any other
6 staffing agency or employer using the same type of
7 practice at Robert Half where it conducts a legal review
8 first, finds a candidate placeable or not placeable
9 through that process, and then sends the pre-adverse
10 action notice under the FCRA?

11 A. Yes, not a staffing agency but other employer.

12 Q. Okay. Who -- who else engages in that?

13 A. I'm not at liberty to say. That's in
14 connection with advice. But I can give you a general
15 description of the -- what the issue was.

16 So as I just described this couple-step process
17 that exists for purposes of complying with these new
18 state and regional Fair Chance housing laws, I have
19 advised a client on how to sort of conform the
20 pre-adverse action notice requirements under the FCRA
21 and also address the Fair Chance housing noti- -- Fair
22 Chance hiring requirements under the various state and
23 local laws.

24 Q. All right. So this is one client of yours in
25 your legal practice?

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1 A. Yes.

2 Q. And you can't tell me who that is?

3 A. That's correct.

4 Q. And the advice you gave them was in connection
5 with, as you said, conforming these Fair Chance law
6 requirements with the federal Fair Credit Reporting Act
7 requirements?

8 A. Correct.

9 Q. Okay. And -- and this client also has a legal
10 review, which results in a placeable or not placeable
11 determination under their Fair Credit Reporting Act
12 policy?

13 A. Not precisely, no.

14 Q. All right. So you are not aware of any other
15 client of yours for purposes of the report in this case
16 or in any other capacity which has a pre-adverse action
17 practice identical to Robert Half's, are you?

18 A. I would say that's fair, yes.

19 Q. Okay. Now, the report that we have up, you
20 prepared under the -- the federal rules for expert
21 reports, understanding that you must express of all your
22 opinions in the report and the basis for them; correct?

23 A. Yes.

24 Q. And, indeed, Exhibit 3 today which is your --
25 I'm sorry. Exhibit 2, which is your expert report of

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1 January 2, 2024 [sic], states all your opinions in this
2 case and the basis for them; correct?

3 A. And my February 2nd rebuttal report.

4 Q. Okay. So let me -- let's just make sure that
5 that's clear. You -- you prepared the January 5, 2024,
6 report, and in that report, you stated all of your
7 opinions and the basis for them; correct?

8 A. Correct.

9 Q. And then you were asked by Robert Half to also
10 prepare a rebuttal report to comment, if you will, on
11 your reviews concerning the expert reports of Plaintiff
12 in this case?

13 A. That's correct.

14 Q. Okay. And then let's make that part of the
15 record.

16 MR. SOUMILAS: I believe we are up to
17 Exhibit 4. It is the February 2, 2024, rebuttal report.
18 Let's place that up on the screen, Ms. Bennett, and give
19 the witness control of the document.

20 (Exhibit 4 was marked/introduced.)

21 BY MR. SOUMILAS:

22 Q. All right. And, Ms. Kuehn, this is the
23 rebuttal report you just referenced; correct?

24 A. I'm just looking at it.

25 Q. Yes.

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1 A. Yes.

2 Q. All right. So between the original report and
3 the expert report -- I'm sorry the original expert
4 report of January 5, 2024, and the rebuttal report of
5 February 2, 2024, those are all of your opinions in this
6 case and the basis for them?

7 A. Yes.

8 Q. All right. Let's go to your original report of
9 January 5, 2024.

10 MR. SOUMILAS: And let's go to the first page,
11 please.

12 I'm sorry, the first page of the text, not the
13 -- not the cover page. The introduction. There we go.
14 Thank you.

15 BY MR. SOUMILAS:

16 Q. And there at the conclusion of your
17 introduction, you write "my expert opinion is that the
18 process in place at RHI during the class period to
19 provide pre-adverse action notices prior to taking
20 adverse actions was and is consistent with industry
21 standards and practices and otherwise reasonable based
22 on my knowledge of the industry."

23 Did I read that correctly?

24 A. Yes.

25 Q. Okay. Let's focus on a few of your words

1 there. You reference "industry standards." And as an
2 expert, you're aware that this is something -- it's an
3 area in which sometimes lawyers offer expert testimony;
4 correct?

5 A. For industry standards, yes.

6 Q. Yes. And depending on the industry, which may
7 be at issue in the lawsuit, there are different sources
8 from which the standards of practice emanate. Would you
9 agree with that?

10 A. As a general principle, yes.

11 Q. Yeah, so if we're talking about the automobile
12 industry, there might be certain standards for brake
13 safety or tires, for example; correct?

14 A. Yes.

15 Q. And if we're talking about medical cases,
16 sometimes there are textbooks on how to perform medical
17 procedures that set the standard for the medical
18 practice, would you agree?

19 A. Yes.

20 Q. When you talk about "standards" in the area of
21 fair credit reporting and pre-adverse action
22 notification, where do the standards come from? Are
23 they written somewhere? Where do they originate?

24 A. When I'm referring to "standards," I'm talking
25 about how industry has operated to comply with various

1 requirements of the FCRA.

2 So, for example, if I were talking about
3 reasonable procedures to assure maximum possible
4 accuracy, I would be talking about the practices used by
5 similar consumer reporting agencies, how industry has
6 adopted that. I often make reference to any guidance
7 that exists, any regulatory guidance, giving sort of
8 direction on how industry should comply. It's sort of a
9 mix of things.

10 Q. I want to break it down because it's very
11 important for me to understand what you're getting at
12 here. So I think the first thing, you -- you said a
13 "mix of things," and at least I heard two things. Maybe
14 there are more. We'll get in it -- into it.

15 But you started with what actors or businesses
16 within the industry actually do in practice; is that
17 fair to say?

18 A. Yes.

19 Q. So how businesses operate to fulfill certain
20 functions of their business.

21 A. Yes.

22 Q. All right. And if we're talking about a
23 standard for the entire industry, how do you -- how do
24 you come to that standard? Is there a book or a manual
25 or a -- some consensus on what most businesses do that I

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1 could take a look at to see whether something comes
2 above or below the standard? You know, where could I
3 find the standard?

4 A. Where I've defined the standard is from looking
5 at a variety of employers. First, in the context of my
6 work at the Federal Trade Commission and investigating
7 different employers and what policies and procedures and
8 practices they employed.

9 I also have looked at, you know, the evolution
10 of how hiring and the use of criminal records has
11 continued to sort of evolve. So, for example, I
12 mentioned the EEOC's guidance -- which was issued in
13 2011, I believe -- with respect to how employers should
14 look at and consider criminal records in their hiring
15 processes.

16 So I consider that as sort of something that
17 the industry is looking at when they're deviling --
18 developing their policies and procedures and have seen
19 how companies' policies and procedures have changed over
20 time to address all of these issues.

21 Q. Let's set regulatory guidance aside for a
22 moment. We're going to get to that next because you
23 also mentioned that as something you're looking at. But
24 forget about laws and regulations.

25 If I just wanted to see, you know, what is the

1 industry standard with respect to providing pre-adverse
2 action notice to job candidates, where would I look to
3 find the standard? Where is it written? Where is it
4 tested? Where is it reviewed? Where is it debated?
5 Where is the standard?

6 A. As I mentioned, the standard exists in how
7 companies have developed their policies and procedures
8 to comply. It all derives from the requirements of the
9 Fair Credit Reporting Act and how companies choose to
10 implement that and their processes for doing that.

11 Q. Is -- it what you call what the industry does
12 in practice your experience with the industry personally
13 in working with clients and having worked with the FTC
14 previously?

15 A. Yes.

16 Q. Okay. But have you published something that
17 kind of sets the standard with respect to pre-adverse
18 action notification or discusses the standard of
19 employers or background screeners or placement agencies?
20 Anybody involved in the process.

21 A. There have been publications issued out of the
22 Fair -- out of the Federal Trade Commission during the
23 time that I worked there that talked about pre-adverse
24 action notices requirements, requirements -- employers
25 in connection with use of criminal records.

1 Q. When you say "publications out of the Federal
2 Trade Commission," I think in your report you
3 referenced, for example, the 40 years report?

4 A. The 40 years report is one of the
5 publications --

6 Q. Right. Let's set that aside because I'm going
7 to set that as a regulatory guidance, the legal guidance
8 that's available for the standard here, and we'll get to
9 that in a moment.

10 But forget -- forget what the legal
11 requirements are. If I just want to know what most
12 employers in the country do with respect to when they
13 send pre-adverse action notice -- how they send it. Is
14 it by email? Is it by text? Is it by U.S. Mail? You
15 know, whether they have a legal review process before
16 they send it.

17 What they actually do in practice, is that
18 standard written down somewhere that I could take a look
19 at it to see whether RHI's policy is consistent with
20 that standard or below the standard or above the
21 standard?

22 A. I didn't review that type of material in
23 connection with my opinion. I based my opinion and my
24 understanding of industry standards on my experience
25 both at the Federal Trade Commission and currently.

1 Q. Okay. Now, you -- you would agree with me that
2 there is a legal standard that sets requirements for
3 sending pre-adverse action notices based in, as we said
4 at the beginning, the Fair Credit Reporting Act's
5 pre-adverse action provisions; correct?

6 A. The Fair Credit Reporting Act, yes, sets out
7 the requirement to provide certain information in
8 advance of adverse action in the context of --

9 Q. Right. And I mentioned at the beginning of
10 this case, I think you said -- I don't know if you refer
11 to it as such -- but I said the 1681b(b)(3) standard.

12 Do you remember me saying that?

13 A. Yes.

14 Q. Is that the legal standard under the Fair
15 Credit Reporting Act for requiring pre-adverse action
16 notification to job applicants under certain conditions?

17 A. Yes.

18 Q. Okay. And you told me you practice in the area
19 of the Fair Credit Reporting Act and give advice and
20 have handled cases in the past; correct?

21 A. Correct.

22 Q. And you're aware that the -- the federal
23 statute, the FCRA, is interpreted by regulatory agencies
24 that give guidance to businesses as to what to do in
25 certain contexts; correct?

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1 A. Yes.

2 Q. And the Federal Trade Commission, or FTC, is
3 one such government regulator that set regulatory
4 guidance; correct?

5 A. Yes.

6 Q. In fact, you personally worked on some -- some
7 of that regulatory guidance in preparing the 40 years
8 report that was issued by the Federal Trade Commission
9 some years ago; correct?

10 A. Yes, among other items, yes.

11 Q. Right. And then in more recent years, I think
12 you note in your report that the CFPB, another
13 government regulator, the Consumer Financial Protection
14 Bureau, also issues legal regulatory guidance to the
15 industry concerning the Fair Credit Reporting Act;
16 correct?

17 A. That's correct.

18 Q. Okay. And sometimes courts -- law courts also
19 issue opinions that could provide guidance to entities
20 that are regulated by the Fair Credit Reporting Act.
21 Would you agree?

22 A. Yes, the court opinions is how they evaluate
23 the FCRA and interpret it, yes.

24 Q. Okay. So when you, you know --

25 MS. PASCHAL: John, can we take a --

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1 MR. SOUMILAS: Yeah.

2 MS. PASCHAL: -- quick break?

3 MR. SOUMILAS: Yeah, yeah, of course. This is
4 a -- this is a good time for a break. Five, ten minutes
5 okay?

6 MS. PASCHAL: Yeah, that's fine for me.

7 Becky, is that okay for you?

8 THE WITNESS: Yeah, that works.

9 THE VIDEOGRAPHER: All right. We're off the
10 record, 11:20 a.m. Eastern.

11 (Break.)

12 THE VIDEOGRAPHER: Back on the record, 11:32
13 Eastern.

14 BY MR. SOUMILAS:

15 Q. All right. Ms. Kuehn, before we took a break,
16 we were going down the road of me trying to understand
17 fully what you mean by the "industry standards" for
18 pre-adverse action notification. And if I recall your
19 testimony correctly, you said it's a combination of
20 variables you look at such as what the businesses'
21 practices actually are, one.

22 Two, we started getting into the legal
23 requirements of the Fair Credit Reporting Act and the
24 regulators that provide guidance on that law.

25 Is there any other variable as a category you

1 look at to -- to determine the standard or pre-adverse
2 action notice besides the actual business practices on
3 the one hand and the legal requirements on the other?

4 A. In this area? No. It's primarily
5 understanding what businesses do to comply and how
6 they've implemented those requirements as well as the
7 regulatory guidance.

8 Q. Okay. And I know we -- we spent some time on
9 the business practices as you personally understand
10 them, and I think you told me that there's no textbook
11 or authoritative treatise that I could look at that
12 actually sets the standard for businesses; correct?

13 A. Outside of regulatory guidance and other
14 similar types of documents, not that I'm aware of.

15 Q. Okay. Is there any type of a survey or any
16 type of statistical data that actually examines what
17 businesses do with respect to pre-adverse action
18 notification, the timing, the method, the process, and
19 categorizes it in a -- in a data bank someplace that I
20 could take a look at?

21 A. Not that I'm aware of.

22 Q. Okay. When you were at the FTC for all those
23 years, did the FTC do any type of a study as to what
24 businesses actually do with respect to pre-adverse
25 action notification?

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1 A. Not a study, no.

2 Q. Okay. Are you aware of any publicly available
3 data that says, you know, "We looked at a thousand
4 businesses or 3,000 businesses" or whatever the number,
5 "and this is what we found with respect to how they
6 treat pre-adverse action notification"?

7 A. I'm not aware of any publication like that.

8 Q. Okay. Flipping back to the legal requirements,
9 we talked a little bit about the regulators which issue
10 guidance under the Fair Credit Reporting Act that might
11 be useful to businesses; correct?

12 A. Yes.

13 Q. And, in fact, you cite quite a bit of that
14 guidance in your expert report. Would you agree?

15 A. Yes.

16 Q. Let's just look at a couple of those that I
17 think might be instrumental.

18 MR. SOUMILAS: I'll ask that we pull up your
19 expert report. That's Kuehn 2. And this time on
20 page 7.

21 BY MR. SOUMILAS:

22 Q. And there at the bottom of page 7, you see you
23 being with a block -- a block quote that says
24 "[E]mployers, before taking an adverse action based on a
25 consumer report, provide the current or prospective

1 employee with a copy of the report, a description of
2 individual's rights under the FCRA, and a reasonable
3 opportunity to respond to any information that is
4 disputed by the consumer," [as read] etc.

5 A. Yes, I see that.

6 Q. And then if we scroll to the next page where
7 the block quote continues and ends, you have a -- a
8 footnote 18.

9 MR. SOUMILAS: And why don't we go down to
10 the -- thank you -- to the bottom of page 8.

11 BY MR. SOUMILAS:

12 Q. There you're citing from a senate report
13 concerning amendments to the federal law, the Fair
14 Credit Reporting Act, as to the purpose of pre-adverse
15 action notice; correct?

16 A. That's correct. This is a senate report that
17 was compiled around the time that the 1996 amendments
18 were being considered.

19 Q. Okay. And as lawyers, that's not unusual.
20 That sometimes in trying to understand a legal standard,
21 you look at the -- the legislative reports that enact
22 the law and what the purpose of the law is; right?

23 A. That's correct.

24 Q. Yeah. And then you -- you -- you said that
25 their regulator's typically charged with interpreting

1 and enforcing the law.

2 Let's move forward in your report to page 16.

3 And -- and there -- I think this is your
4 language at the very bottom of that page -- it says "The
5 purpose of the pre-adverse action notice is to provide
6 the candidate with the opportunity to explain the
7 results to the employer before it finalizes its
8 decision," and you have a footnote there as well.

9 MR. SOUMILAS: Let's go to footnote 33, please.

10 BY MR. SOUMILAS:

11 Q. There you cite to the Federal Trades
12 Commission's report "Background Checks: What Employers
13 Need to Know" from February 2014; correct?

14 A. That's correct. I wouldn't characterize it as
15 a report. It's business guidance.

16 Q. It's business guidance. So this is part of the
17 regulatory guidance for businesses about pre-adverse
18 action notification; correct?

19 A. That's correct.

20 Q. And, in fact, you have a parenthetical to that
21 guidance that you quote in your footnote. You say "By
22 giving the person the notice in advance, the person has
23 an opportunity to review the report and explain any
24 negative information," end quote.

25 Do you see that?

1 A. Yes.

2 Q. Okay. And, again, this is part of the
3 regulatory standard for pre-adverse action notice, at
4 least according to the Federal Trade Commission.

5 A. Yes.

6 Q. And then if we go to another part of your
7 report, page 8, and now I'm going to reference another
8 footnote, footnote 19. It's another block quote.
9 Again, you cite from the Federal Trade Commission a
10 legal standard for pre-adverse action, and that comes
11 straight out of the 40 years report that you worked on
12 in part with other people at the FTC; correct?

13 A. That's correct.

14 Q. All right. And, in fact, that block quote that
15 you have associated with footnote 19 ends, quote, "An
16 employer can comply with the pre-adverse action
17 disclosure requirements by sending a copy of the report
18 to the consumer (with the summary of human rights) as
19 soon as it is prepared by the CRA or received by the
20 employer" [as read]; correct?

21 A. That's correct.

22 Q. And the reference to "CRA" there is consumer
23 reporting agency, the company that usually prepares
24 these reports for employers or the users of consumer
25 reports for employment purposes; correct?

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1 A. That's correct.

2 Q. Okay. So, now, that particular quote that an
3 employer can comply with a pre-adverse action disclosure
4 requirement by sending a copy of the report to the
5 consumer with a summary of rights, as soon as it's
6 prepared by the CRA or received by the employer, you
7 agree that this is a proper method of complying with
8 pre-adverse action notice requirements; right?

9 A. Yeah. The FTC guidance basically says you can
10 comply by doing it that way, yes.

11 Q. All right. And then if we go back to the
12 Robert Half written policy that we marked as Kuehn 3 in
13 this case, and if we go down further on this first page
14 of adverse --

15 MR. SOUMILAS: Right there is fine.

16 BY MR. SOUMILAS:

17 Q. -- of Handling Derogatory Results, there's a
18 section, Pre-Adverse Letter Process.

19 It reads that "When background checks are
20 returned discrepant or derogatory, the Fair Credit
21 Reporting Act (FCRA) imposes stringent notification
22 requirements before and after making an adverse
23 employment decision. The pre-adverse letter" -- and
24 this is in bold within the policy -- "must be sent
25 immediately" -- and then it continues -- "when a

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1 background check is returned with discrepant and/or
2 derogatory results" meaning a "(red or yellow flag)."

3 Do you see that?

4 A. I see that.

5 Q. Would you agree that this written policy by RHI
6 to send an pre-adverse reaction letter immediately when
7 a background check is returned with a red or yellow flag
8 is consistent with the FTC standard that you cite on
9 page 8 of your report, that an employer could comply
10 with pre-adverse action requirements by providing the
11 report and a statement of rights as soon as add -- as
12 soon as it is prepared by the CRA or received by the
13 employer?

14 A. Yeah -- it appears -- yes, that would be
15 consistent with the FTC staff report.

16 Q. Are you familiar with any FTC staff report or
17 advice to business or regulatory interpretation that
18 says that compliance may also be achieved if you put the
19 employee in a holding pattern, go through legal review,
20 make a determination that the employee is not placeable,
21 and then send the pre-adverse action notice?

22 A. I'm not aware of specific guidance. I do know
23 that the FTC has worked with the EEOC on some combined
24 guidance with respect to the different requirements,
25 including the requirement to make it an individualized

1 determination on criminal records.

2 Q. Sure. Certainly, your report doesn't cite to
3 any specific FTC guidance concerning the FCRA
4 pre-adverse action notice requirements stating that a
5 holding pattern, legal review, and a non-placement
6 determination followed by the sending of the pre-adverse
7 action notice is a proper way of complying with the
8 FCRA's pre-adverse action requirements?

9 A. I'm not aware of any specific FTC statement for
10 that fact pattern; that's correct.

11 Q. All right. Why don't we go on to -- walking
12 through the Robert Half practice as compared to this
13 written policy.

14 So let's put the written policy down as an
15 exhibit, and let's just go through the actual practice,
16 as you understand it, step by step. I have some
17 questions among the process as to what your opinions
18 are.

19 Do you have an understanding, Ms. Kuehn, as to
20 what point in the hiring process RHI typically pulled
21 these employment background reports for the candidates,
22 like Ms. Magallon, in the class here?

23 A. Based on my recollection, they would attain
24 background checks either when the applicant disclosed a
25 criminal background record or when the particular

1 position required some form of criminal record
2 background screening.

3 Q. Okay. And do you have an understanding whether
4 typically these applicants would have made some written
5 application to Robert Half to be placed in a temporary
6 role?

7 A. Temporary or permanent. Robert Half does
8 placement for both, I understand.

9 Q. Okay. And do you understand that these
10 candidates in the class would have interviewed with
11 somebody at Robert Half before the background check
12 would be pulled?

13 A. It's my understanding of the process that
14 they -- there was a process of evaluation of the
15 candidate for their qualifications first. And that may
16 have been part of it.

17 Q. All right. Do you know whether there would be
18 a particular opportunity for the candidate to be placed
19 at an office or a school or a hospital, what have you,
20 at the time that the background report is pulled?

21 A. It's my understanding that varied. That it
22 depended on whether they had an active placement they
23 were trying to make or whether they were bringing
24 someone on board for future placements.

25 Q. All right. And do you understand whether the

1 folks in our class here, like Ms. Magallon and the 2,363
2 other job candidates, had an intent of being placed in a
3 job and to get paid or being placed by the staffing
4 agency with a particular employer?

5 MS. PASCHAL: Objection. Calls for
6 speculation. And foundation.

7 A. I don't recall a specific definition of the
8 class as I'm sitting here. So I have no -- no answer
9 for your question. I don't know one way or another.

10 BY MR. SOUMILAS:

11 Q. All right. Do you know whether the class is
12 comprised of temporary job placements as opposed to
13 permanent?

14 A. I don't recall as I'm sitting here.

15 Q. Now, there is a point where the moment comes
16 that Robert Half is going to run a background report on
17 these candidates, and is it your understanding that for
18 the class at issue here, the reports would be run
19 through GIS, the consumer reporting agency or CRA that's
20 known as GIS?

21 A. That's -- it's mentioning that was their
22 background check vendor at the time of the class period,
23 yes.

24 Q. Okay. And do you understand that according to
25 either Robert Half's criteria or the -- the company in

1 which the person would be placed to work, there were
2 certain hiring criteria that would be evaluated as part
3 of a background check and be deemed to either be
4 derogatory or to satisfy the job requirements?

5 A. Evaluated by -- I'm trying to make sure I
6 understand your question.

7 Q. With yeah. So it would be evaluated by GIS and
8 then -- and then there would be a corresponding flag,
9 either a green flag or a red or a yellow flag?

10 A. Yes, I understand that during this class
11 period, they had -- RHI had provided certain criteria to
12 GIS to say, "Let's us know when results of these charac-
13 -- categories come in" and to flag those for RHI.

14 Q. Okay. And then let's just go back to the
15 written policy for a moment.

16 MR. SOUMILAS: I think that's Exhibit 3,
17 please. And go -- let's go to the top.

18 BY MR. SOUMILAS:

19 Q. Do you understand that, at least according to
20 this policy, when -- when there's discrepant or
21 derogatory information on one of these GIS background
22 reports, that would be flagged by putting a red or
23 yellow flag on the report?

24 A. Yes, I understand that.

25 Q. And, conversely, if it's a green flag, then

1 that means no derogatory results, clear sail; right?

2 A. It means no derogatory results. I can't say
3 "clear sailing" with respect to any hiring decision.

4 Q. Well, let's see what you understand there to
5 be. If someone comes back through this process -- now
6 we run the background report and it comes back with a
7 green flag on the one hand, did you understand that
8 there were any impediments or any problems with that
9 candidate being placed in a job right away?

10 A. I can't speak to every individual circumstance.
11 It would mean that the background check doesn't propo-
12 -- doesn't impose a sort of disqualification for that
13 employment opportunity.

14 Q. Okay. Could we agree that if it's a red or
15 yellow flag, it could create a disqualification, and
16 therefore, those candidates are put aside on a holding
17 pattern?

18 MS. PASCHAL: Objection. Foundation.

19 A. It's my understanding that if -- if there were
20 these types of results returned, that would result in
21 the background check being sent to legal for review
22 before the consumer could be placed in a particular
23 opportunity.

24 BY MR. SOUMILAS:

25 Q. In your report, you call this, like, a hold --

1 a "holding pattern," don't you?

2 A. Yes, it's my understanding that -- I think the
3 company had referred to it that way as well.

4 Q. Okay. And who makes that decision as to
5 whether the candidate should be placed in a holding
6 pattern because of the red or yellow flag or has a green
7 flag and, therefore, doesn't need to be placed in a
8 holding pattern?

9 A. My understanding of RHI's process is that if a
10 report came back with results that were -- you know,
11 basically with a criminal background check, we're really
12 probably talking about whatever they came back as
13 results, so yellow or green -- yellow or red flag or
14 with discrepant or potentially derogatory results, those
15 reports were sent to legal for review to determine
16 whether the information that was included in that report
17 was, in fact, disqualifying for the position.

18 Q. Is -- is it your understanding that RHI would
19 make that decision and send red or yellow flags on
20 background reports to legal review and then to be placed
21 in this holding pattern?

22 A. Yes, you went in and out --

23 Q. Did GIS make the decision? Did somebody else
24 make the decision? I'm trying to figure out what your
25 understanding is, whether GIS made that decision, RHI

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1 made that decision, somebody else. Who made the
2 decision to -- to put red or yellow flags in a holding
3 pattern and to put them through legal review?

4 A. It was RHI's process to send any reports that
5 contained results to legal for review.

6 Q. Okay. So that was built into the process, if
7 you will, that determination?

8 A. That's part of the process.

9 Q. Okay. Do you consider the determination to
10 place a red or yellow job candidate on hold adverse to
11 the interests of that candidate?

12 MS. PASCHAL: Objection. Foundation. Calls
13 for a conclusion beyond the scope of her report.

14 A. It is my understanding that it's part of the
15 process in reviewing the background check reports. And
16 similar to other employers, you -- you wait for the
17 background check to be cleared before you can place the
18 consumer in a particular position, whether that's a
19 direct hire or through an agency like this.

20 BY MR. SOUMILAS:

21 Q. Yeah. I'm just trying to understand whether,
22 in your opinion, making that determination to place
23 someone in the holding pattern because of the red or
24 yellow flag at ARR -- RHI -- do you think that's adverse
25 to the interests of the job candidate?

1 MS. PASCHAL: Same objections. Beyond the
2 scope of her opinion. She's not asked to opine on that.

3 MR. SOUMILAS: Yeah, so you didn't ask her to
4 opine on that.

5 BY MR. SOUMILAS:

6 Q. But I'm asking you, your judgment as a lawyer
7 and someone who looked at this case and knows what an
8 adverse action is, is there any adverse action by
9 placing people on this hold and putting them into legal
10 review?

11 MS. PASCHAL: Same objection. It's beyond the
12 scope of her expert designation.

13 BY MR. SOUMILAS:

14 Q. You can answer it.

15 A. In my personal experience and my understanding
16 of the facts, no, because it was just part of the review
17 of the process -- of the background check process.

18 Q. Would you agree with me that, as a practical
19 matter, people who are put on hold and put through the
20 legal review process cannot be placed in a job right
21 away?

22 MS. PASCHAL: Objection. Foundation.

23 A. That's my understanding of the process, that
24 the -- that process has to work through and they have to
25 complete their review.

1 BY MR. SOUMILAS:

2 Q. Is it your understanding that people in the
3 class who were placed in the hold and legal review
4 process would not be getting paid by RHI or the ultimate
5 employer for the job under consideration --

6 MS. PASCHAL: Same objection.

7 BY MR. SOUMILAS:

8 Q. -- during this holding period?

9 MS. PASCHAL: Same objection. Foundation.
10 Beyond the scope of what she's being designated as an
11 expert for.

12 A. Well, again, I wasn't asked to opine on this,
13 but the fact that someone hasn't been put in a job and
14 started work on a particular day, yes, there's a delay
15 that they're not going to get paid until they start
16 work.

17 BY MR. SOUMILAS:

18 Q. Right. So at this point, I'm asking you your
19 understanding of the process as to actual practice/work.
20 I don't even think I asked your opinion.

21 Do you think that these job candidates who are
22 placed on hold receive salary during the hold period, or
23 do they go unpaid as the process through the legal
24 review goes forward?

25 MS. PASCHAL: Objection. Foundation. Calls

1 for speculation. Beyond the scope of what she's being
2 designated for.

3 A. I don't have a specific knowledge about whether
4 people were paid while they were on hold or not.

5 BY MR. SOUMILAS:

6 Q. So as part of examining this case and -- and
7 forming your expert opinion, you did not consider
8 whether candidates with red or yellow flags on hold were
9 getting paid or not?

10 A. That's correct.

11 Q. Okay. And did you have an understanding as to
12 whether those candidates who would be placed on the hold
13 because of the red or yellow flag would be told by RHI
14 that there's potentially disqualifying information on
15 their background report?

16 MS. PASCHAL: Same objection. Calls for
17 speculation. Lack of foundation. And beyond the scope
18 of her expert designation.

19 A. As a factual matter, it's my understanding from
20 the folks who conduct the legal review that as part of
21 their legal review they would often reach out to the
22 candidates if they were working through particular
23 issues or trying to understand particular background --
24 criminal record background results.

25 BY MR. SOUMILAS:

1 Q. Okay. And this last answer when you say that
2 the "folks" -- those are the people you interviewed for
3 your report, Kathleen Cattani and Ted Mawla?

4 A. Yes.

5 Q. All right. And during this -- these occasions
6 where they would sometimes reach out to those people for
7 a discussion -- some of these people for a discussion --
8 would you agree with me that, under the practice of RHI,
9 these people would not have a copy -- a copy of the
10 background report with the discrepant information
11 provided to them by RHI in advance of any such
12 discussion?

13 MS. PASCHAL: Objection. Foundation. Calls
14 for speculation.

15 A. I don't know what the legal reviewers would
16 have done in the context of any particular consultation
17 with the applicants at that point, so I don't know that
18 for certain.

19 BY MR. SOUMILAS:

20 Q. Right. But do you understand that the practice
21 was to send the pre-adverse action notice and a copy of
22 the report only at the conclusion of the legal review
23 process when someone was found not placeable at the --
24 at the end of a hold, if you will?

25 A. Once the legal review had determined that the

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1 records that were reflected in the background check were
2 disqualifying, then they were directed to the
3 pre-adverse action notice, which consists of a copy of
4 the report and a summary of rights.

5 Q. Okay. And when you say they would be sent that
6 information at the end of the -- the process, are you
7 saying that they're supposed to be sent that
8 information, or you know for a fact they were sent that
9 information?

10 A. The process at the RHI, based on the testimony
11 that I reviewed, is that at the conclusion of the legal
12 review process, legal directs -- says, "Yes, this is a
13 person who should receive a pre-adverse action notice,"
14 and then the -- the notice is sent.

15 Q. So you're saying here under oath today that at
16 the conclusion of the legal review process if a
17 not-placement determination is made, RHI will always
18 send a pre-adverse action notice to those candidates?

19 MS. PASCHAL: Objection. Calls for
20 speculation.

21 A. That is its practice. It's my understanding in
22 this case, of course, that the plaintiff asserts she
23 never received a pre-adverse action notice.

24 BY MR. SOUMILAS:

25 Q. Do you know how many of the --

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1 MS. PASCHAL: Objection. I don't think the
2 witness was finished giving her answer.

3 MR. SOUMILAS: Oh, I'm sorry. Was there more
4 to that answer?

5 THE WITNESS: Yes, sir, there was.

6 MR. SOUMILAS: Oh, go ahead.

7 A. Plaintiff, you know, asserts that she didn't
8 receive the notice, so there may have been instances
9 where, despite the practice and the process, notices
10 might not have been sent. But I can't tell you that one
11 way or the other.

12 BY MR. SOUMILAS:

13 Q. Did you conduct any research as to how many of
14 the 2,363 class members here were actually sent a
15 pre-adverse action notice after they were found not
16 placeable at the end of the legal review?

17 A. I did not.

18 Q. Okay. Did you look at any data from this case
19 as to how frequently RHI has a record of sending a
20 pre-adverse action notice to job candidates with a red
21 or yellow flag who are found not placeable at the end of
22 legal review?

23 A. I did not.

24 Q. Okay. Give me a second, please.

25 MR. SOUMILAS: Would you scroll further down in

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1 this document, Ms. Bennett. Hold on. Just a little
2 slower. I'm sorry. Put it -- could you put this
3 document down for a moment. Oh, I'm sorry. Let's go
4 back to that policy document again.

5 BY MR. SOUMILAS,

6 Q. And, Ms. Kuehn, I want to direct your attention
7 to this section underneath the portion of the policy
8 that says "pre-adverse letter must be sent immediately,"
9 and then it has a number of items listed by number and
10 letter underneath that.

11 Do you see it?

12 A. I do.

13 Q. And it says -- number 1 is that the -- what the
14 candidate must be sent is the pre-adverse action letter
15 under 1.a; then 1.b., a copy of the report; and c. is a
16 copy of the summary of consumer rights.

17 Do you see that?

18 A. I do.

19 Q. And then the very next I -- action item is that
20 the company's supposed to scan a copy of these documents
21 to be sent into the LiveLink database.

22 You see that?

23 A. I do.

24 Q. And that's not unusual that a company would
25 keep a copy of important legal notices that it sends to

1 candidates as part of its records; correct?

2 A. That's correct. Different companies have
3 different procedures for doing that. But some sort of
4 record to double-check what they've done.

5 Q. Okay. Now --

6 MR. SOUMILAS: Let's put this document down.

7 BY MR. SOUMILAS:

8 Q. Would -- would you consider it adverse to the
9 interest of these job candidates in our class if they do
10 not have a copy of their background report with a red or
11 yellow flag on it during the time of legal review?

12 MS. PASCHAL: Objection. Foundation,
13 speculation, and beyond the scope of the testimony she's
14 been designated to give.

15 A. Yeah, I don't have an opinion on that.

16 BY MR. SOUMILAS:

17 Q. One way or the other, you just don't have an
18 opinion?

19 A. I -- I don't. As I said, I don't know about
20 the specific nature of any discussion between the legal
21 reviewers and any candidates, what information may have
22 been shared. So whether or not someone's disadvantaged
23 by not having a specific copy of a background check, I
24 wouldn't have any understanding of that.

25 Q. Okay. And would your answer be the same with

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1 respect to the statement of FCRA rights that's supposed
2 to be sent out along with a pre-adverse action notice,
3 that you don't have an opinion as to whether or not
4 having those rights in hand during the legal review is
5 adversely im- -- is adverse -- adversely affecting the
6 job candidates in our class?

7 A. I have no opinion of that.

8 Q. Okay. Would you agree with me that this
9 statement of FCRA writes/provides that candidates may
10 take up a dispute with a background screener who
11 actually prepared the report?

12 MS. PASCHAL: Objection. Beyond the scope of
13 what her testimony is being offered for.

14 A. Yes, the summary of rights includes within it a
15 description of the consumer's right to dispute
16 inaccurate or incomplete results.

17 BY MR. SOUMILAS:

18 Q. Right. So if the consumer believes that
19 something on the report is either inaccurate or not
20 complete, they have a right under the FCRA to take that
21 issue up with the background screener. In this case, it
22 would be GIS; correct?

23 A. Yes, that's what the FCRA provides.

24 Q. But during RHI's legal review process, if the
25 practice is followed as it should, the job candidates

1 would not have a copy of the report and would not have a
2 statement of their rights to make any such dispute.
3 They might not even know who to make the dispute with or
4 who the background screener is. Would you agree?

5 MS. PASCHAL: Objection. Foundation, calls
6 speculation, and beyond the scope of what her testimony
7 is being offered for.

8 A. I wouldn't have any knowledge of what they had
9 in their hands at that time.

10 I do know the process requires that following
11 legal review, consumers are sent -- are to be sent their
12 pre-adverse action notice, which consists of a copy of
13 the report and a summary of rights and that consumers,
14 you know, can dispute it and also reach out to RHI
15 during that period.

16 Based on the folks I interviewed from the legal
17 department, they have made changes and determinations
18 based on those subsequent disputes as well.

19 BY MR. SOUMILAS:

20 Q. Do you see any harm with providing these job
21 candidates a copy of the background report with
22 discrepant or derogatory information on it and a
23 statement of their rights to dispute during the legal
24 review process?

25 MS. PASCHAL: Objection. Form.

1 BY MR. SOUMILAS:

2 Q. Is there any harm --

3 MS. PASCHAL: Objection. Foundation. And
4 beyond the scope of what she -- her testimony's being
5 offered for.

6 A. It's my understanding that RHI wanted to do
7 their legal review so they could determine whether the
8 potential criminal records that came back were, in fact,
9 disqualifying.

10 They -- in part of the choice to send the
11 notice after that was to only send it to the consumers
12 who were really going to be affected by their background
13 check report in the hiring process is -- you know, I
14 think employers can take different approaches depending
15 on their hiring practices, you know, whether they want
16 to just send one every time negative results come back,
17 as you were talking about earlier, or whether they want
18 to -- first, is it, in fact, a disqualifying report
19 before they send out the adverse action notice.

20 BY MR. SOUMILAS:

21 Q. Okay. You said that your understanding is that
22 sometimes during the legal review process, some lawyer
23 from RHI may reach out to a candidate with questions
24 about the background check; right?

25 A. Yes, it could be the lawyer or someone from the

1 local office who's working with the candidate at the --
2 at the legal department's request.

3 Q. Right. And if the practice as it's supposed to
4 operate is followed, that candidate wouldn't have a copy
5 of the background report during this conversation that
6 might take place.

7 MS. PASCHAL: Objection. Asked and answered,
8 calls for speculation, and foundation.

9 A. They may or may not. I have no idea if they've
10 gotten a copy of the report in connection with those
11 discussions or otherwise.

12 BY MR. SOUMILAS:

13 Q. When you say "may or may not," but you also
14 have an opinion that the pre-adverse action notification
15 and report goes out only at the end of that process
16 after a non-placement determination.

17 So why would you think -- where did they get a
18 copy of this report from?

19 MS. PASCHAL: Objection. Calls for
20 speculation.

21 A. And -- and you asked me definitively whether
22 they didn't have it. And I don't know with respect to
23 any particular discussions or follow-up from the offices
24 at the direction of legal whether information was shared
25 with any particular applicant.

1 BY MR. SOUMILAS:

2 Q. Okay. Let's move on in the process.

3 It -- it sounds like the legal review process
4 takes some time, considers information. It might
5 involve talking to the candidate. It might not. And at
6 the end of the process, the -- the practice is for
7 determination to be made by RHI whether the candidate is
8 placeable or not placeable.

9 Would you -- is that your understanding of the
10 -- the practice?

11 MS. PASCHAL: Objection. Compound.

12 A. It's my understanding at the completion of
13 review, they make a determination whether or not the
14 consumer -- the -- the applicant is placeable based on
15 their background check.

16 BY MR. SOUMILAS:

17 Q. Okay. Do you consider a not-placeable
18 determination by RHI's legal review team to be adverse
19 action?

20 MS. PASCHAL: Objection. Foundation, calls for
21 speculation, and it's beyond the scope for which her
22 testimony is being offered.

23 A. It's my understanding that at that point
24 there's a determination to send it to the consumer,
25 their pre-adverse action notice, and that the

1 determination is held for ten days to allow the consumer
2 time to reach back to RHI or to the background screening
3 company.

4 BY MR. SOUMILAS:

5 Q. What determination is held for the ten days?

6 A. The final decision on behalf of the consumer
7 that they, you know, won't get a job.

8 Q. Okay. So when you say it's "held for ten
9 days," as in it's made in a not-placeable determination
10 and then held for ten days?

11 A. They -- they have decided that the consumer,
12 based on the background check, is not placeable. They
13 do not take adverse action for another ten days to allow
14 the consumer time to receive the notice and to respond
15 if they want to.

16 Q. Okay. Do you consider the not-placeable
17 determination by the RHI legal team itself to be a
18 decision adverse to the interest of the consumer, the
19 job candidates in this case?

20 MS. PASCHAL: Objection. Foundation, calls for
21 speculation, and beyond the scope of what she's being
22 offered for as an expert.

23 A. It is a -- it is a determination that they
24 intend to take adverse action, and that triggers the
25 responsibility of the adverse action notice.

1 BY MR. SOUMILAS:

2 Q. Okay. You -- you know how often red or yellow
3 flag candidates result in a not-placeable determination?

4 A. I do not have any specific data on that.

5 Q. Okay. Are you aware that Ms. Magallon, the
6 lead plaintiff in this case, was found not placeable?

7 A. That's my understanding.

8 Q. Okay. And is it your understanding that she
9 wasn't hired for that job that she was being considered
10 for?

11 MS. PASCHAL: Objection to form. Vague.

12 A. It -- it --

13 BY MR. SOUMILAS:

14 Q. Let me ask it a little tighter. But -- because
15 of the red flag on her background -- her GIS background
16 report and the not-placeable finding, at that time she
17 was not placed in that job?

18 MS. PASCHAL: Same objection.

19 A. Following legal review, yes, that's my
20 understanding.

21 BY MR. SOUMILAS:

22 Q. And are you -- and are you aware that the
23 class, by definition, is 100 percent com- -- comprised
24 of job candidates who were found not placeable?

25 MS. PASCHAL: Objection. Foundation.

1 A. As I mentioned, I don't recall the specific
2 definition of the class, so I can't answer your
3 question.

4 BY MR. SOUMILAS:

5 Q. Okay. Do you know whether any of the class
6 members who were found not placeable after legal review
7 were nevertheless placed in the aja- -- exact job for
8 which they had applied and which led to the background
9 report with the red or yellow flag in the first
10 instance?

11 A. I have no knowledge one way or the other.

12 Q. Do you know whether that was ever done with any
13 of the job candidates? Did you look at any data on
14 that?

15 A. I did not look at any data on that; however,
16 based on my discussions with the personnel who conduct
17 the legal review, there were consumers who had red- or
18 yellow-flagged background checks who after legal review
19 were determined not to be -- not that those decis- --
20 the information was not disqualifying for position.

21 And, also, I specifically asked whether the
22 legal re- -- folks whether or not following a
23 pre-adverse action notice they'd ever been presented
24 with information that led to a change in that decision,
25 whether to hire. And they both indicated that there

1 were situations like that, where the consumer had either
2 provided additional information or had in -- instituted
3 a dispute with the consumer reporting agency, that the
4 record didn't belong to them or whatever circumstances
5 or that there were subsequent expungements or things
6 like that.

7 Q. And when you say your discussions with these
8 "folks," are you again referring to Kathleen Cattani and
9 Ted Mawla, who you interviewed on December 28th, 2023?

10 A. Yes.

11 Q. Okay. Now, of course, if people go through
12 this legal review and are found to be placeable, would
13 you agree with me that those people are not in our
14 class?

15 MS. PASCHAL: Objection. Foundation. Goes
16 beyond the scope of what she's being asked to give
17 expert testimony on.

18 A. As I mentioned, I don't recall the definition
19 of the class, so I can't answer that question.

20 BY MR. SOUMILAS:

21 Q. But you said you did review the court's class
22 certification decision?

23 A. I did.

24 Q. Okay. And do you have a general understanding
25 that there is a definition, usually, for certified

1 classes?

2 A. I do, Mr. Soumilas, but I don't remember the
3 precise definition here.

4 Q. Okay. No problem. The -- now, we -- we
5 discussed the practice as it differs from the written
6 policy, and there's this attorney review period and a
7 hold, right, and then you said at the end of this when
8 there is a not-placeable determination, the company
9 would then send the pre-adverse action letter and a copy
10 of the reported statement of rights; correct?

11 A. That's correct.

12 Q. And then after that letter is supposed to be
13 sent, is there another review process that takes place
14 according to the evidence that you reviewed -- a -- a
15 second legal review process or an add -- some different
16 type of process?

17 A. It's my understanding that if, during that
18 ten-day period prior to the adverse action notice being
19 sent, a consumer comes forward and has some issue with
20 respect to the background check, there have been
21 opportunities for consumers to bring in additional
22 information or dispute with GIS and that that
23 determination -- preliminary determination as reflected
24 in the pre-adverse action notice may be overturned.

25 Q. How many times for the composition of our class

1 has that not-placeable determination been overturned in
2 the next ten days?

3 MS. PASCHAL: Objection. Foundation. Beyond
4 the scope of what she was asked to opine on.

5 A. I do not know that.

6 BY MR. SOUMILAS:

7 Q. Have you seen a single one get overturned where
8 you have documentation in this case, in this case file?

9 A. I haven't looked for it. I based my -- my
10 recollection of this on my interviews with the folks in
11 the legal department.

12 Q. All right. Now, and you're assuming that upon
13 the not-placeable finding at the conclusion of a hold,
14 then the pre-adverse action letter and report is
15 supposed to be sent by the company to these candidates;
16 correct?

17 A. Yes.

18 Q. Okay. And at least according to the written
19 policy, there's supposed to be a scan of that
20 pre-adverse action letter and package maintained by the
21 company?

22 A. Based on the written policy, yes.

23 Q. And have you taken a look as to whether, in
24 fact, for the class population here or for anybody found
25 not placeable, RHI always sends to those candidates a

1 pre-adverse action letter and package?

2 MS. PASCHAL: Objection. It goes beyond the
3 scope of her testimonial designation.

4 A. Are you -- are you asking questions about the
5 recordkeeping, or are you asking about the practice?

6 BY MR. SOUMILAS:

7 Q. I'm asking about your review of material in
8 forming your opinions, whether you looked at whether
9 those pre-adverse action letters, in fact, go out to job
10 candidates once they're filed -- once they're found to
11 be not placeable at the end of legal review.

12 MS. PASCHAL: Objection. Assumes facts not in
13 evidence. Foundation. Calls for speculation.

14 MR. SOUMILAS: All this? Okay.

15 BY MR. SOUMILAS:

16 Q. Go ahead. You can answer.

17 A. It's my understanding that the recordkeeping
18 practices, as I mention in my report and acknowledge in
19 my report, were not entirely consistent at RHI, and so
20 they don't have a record every time that a pre-adverse
21 action notice was sent.

22 Q. Do you know whether they have a record half of
23 the time where a pre-adverse action notice was supposed
24 to be sent after a not-placeable determination and legal
25 review?

1 A. I don't --

2 MS. PASCHAL: Objection. Calls for
3 speculation.

4 A. Sorry. I do not know that.

5 BY MR. SOUMILAS:

6 Q. Do they have it even 20 percent of the time?

7 MS. PASCHAL: Objection. Asked and answered.

8 A. I do not know that.

9 BY MR. SOUMILAS:

10 Q. Would your opinion that RHI's practices are not
11 a violation of the FCRA change if you knew that even at
12 the end of the legal review process when there's a
13 not-placeable finding, even then, 90 percent of the time
14 RHI does not send the pre-adverse action letter to those
15 candidates, like it didn't in Ms. Magallon's case?

16 MS. PASCHAL: Objection. Misstates the opinion
17 in her report. Objection. Foundation and beyond the
18 scope what she's been designated for.

19 A. I have no knowledge that they didn't send a
20 report in 90 percent of the circumstances. That's not a
21 fact I'm aware of that's in the evidence.

22 BY MR. SOUMILAS:

23 Q. Okay. Would it change your opinion if
24 hypothetically that was the evidence?

25 A. If there was evidence that a company had a

1 procedure to send out a report but then didn't actually
2 follow it 90 percent of the time?

3 Q. Yes.

4 A. If that's the assumption, then that means their
5 practice is not in accordance with the Fair Credit
6 Reporting Act.

7 Q. And would you agree with me that as part of
8 this process not only a pre-adverse action letter is to
9 be sent but a final adverse action letter?

10 A. Yes. In employment, you're required to provide
11 both a pre-adverse action notice as well as an adverse
12 action notice once the -- the decision is final.

13 Q. All right. And is it your understanding that
14 RHI's practice was to send that letter ten days after
15 the not-placement determination and the purported
16 sending of the pre-adverse action letter?

17 A. That's my understanding.

18 Q. Okay. And do you know as a matter of fact
19 whether for the class population here RHI sent -- sent
20 all of them adverse action letters?

21 MS. PASCHAL: Objection. Goes beyond the scope
22 of what her testimony's been designated for.

23 A. I do not.

24 BY MR. SOUMILAS:

25 Q. Is it your understanding that the adverse

1 action letter is always supposed to be sent to the
2 candidate ten days after the pre-adverse action letter?

3 MS. PASCHAL: Same objection. Beyond the scope
4 of her designated testimony.

5 A. Are you asking about RHI's process? Because
6 different employers have different timing requirements
7 with respect to their adverse action notices.

8 BY MR. SOUMILAS:

9 Q. Yes. Yes. I'm asking about RHI.

10 Is it RHI's process to send those adverse
11 action letters ten days after the pre-adverse action
12 letters?

13 MS. PASCHAL: Same objection.

14 A. It's my understanding that was the process
15 during the time relevant to the class action complaint.

16 BY MR. SOUMILAS:

17 Q. All right. Now, would, in your view, RHI be
18 violating the Fair Credit Reporting Act's pre-adverse
19 action requirements, if it actually followed its written
20 policy?

21 MS. PASCHAL: Objection. Calls for legal
22 conclusion. Beyond the scope of what her expert
23 testimony is being offered for.

24 A. No. It would not violate the FCRA for them to
25 follow the written procedure.

1 BY MR. SOUMILAS:

2 Q. Now, you are aware, aren't you Ms. Kuehn, that
3 the Fair Credit Reporting Act or FCRA has other adverse
4 action notice requirements in different contexts such as
5 mortgages and car loans and credit cards; right?

6 A. Correct.

7 Q. And in those other contexts, if a bank, let's
8 say, turns someone down for a mortgage because of their
9 consumer report, they're supposed to send an adverse
10 action notice to the applicant informing them they were
11 denied credit and it had to do with their consumer
12 report and a company from which the report originated;
13 right?

14 A. Those are some of the requirements, yes.

15 Q. But in those other contexts, in fact, in all
16 the other contexts where the FCRA requires adverse
17 action notice, it does not also require pre-adverse
18 action notice?

19 A. That's correct. Pre-adverse action is a unique
20 requirement when consumer reports are used in the
21 context of employment decisions.

22 Q. So would you take from that that -- that the
23 unique context of employment decisions, that there are
24 supposed to be some opportunity for the potentially
25 adverse decision not to take place and for the candidate

1 to be able to not be the subject of adverse action?

2 A. Assuming I'm following your question, it's my
3 understanding that the purpose of a pre-adverse action
4 notice is to provide the consumer with an opportunity
5 once they get the results of the report with their
6 employer. They also have an opportunity to dispute that
7 with the consumer reporting agency, but that may -- that
8 process may or may not conclude within any time period
9 prior to taking adverse action.

10 Q. Okay. But this opportunity that you referenced
11 and that's in the FTC commentary that you cite is
12 intended so that there is a possibility, at least, that
13 there won't be any adverse action with respect to the
14 job candidate. Whereas if you compare it to the credit
15 applicant, they're not afforded this opportunity.
16 You're either qualified for the mortgage, or you don't,
17 and you don't get some chance to reverse the decision or
18 to discuss it with a bank.

19 Is that a fair summary?

20 A. Yeah. Although I will say in a mortgage
21 context -- I just want to be precise -- in the mortgage
22 context, consumers are afforded an opportunity to get
23 their credit score very early in the process. It's one
24 of the requirements under the FCRA. And so often there
25 may be some discussion there if something seems to be

1 "discrepant" -- to use the word that we've been using in
2 this -- in this case.

3 Q. And --

4 A. And -- and I would note, again, even though
5 it's not specifically in the FCRA, the CFPB has kind of
6 indicated its desire to have more of a pre-adverse
7 action process in the tenant screening context as they
8 did in a recent enforcement case.

9 Q. Well, that's good to know.

10 But this opportunity that definitely exists
11 within the face of the statute for employment under the
12 FCRA, you would agree with me is in place to have a
13 certain effect, which is to prevent the adverse action
14 from happening?

15 A. It's to provide the consumer with the
16 opportunity, based on the materials I reviewed from FTC
17 guidance and others and the senate report, for example.
18 Though, there is an understanding that sometimes the
19 information is disqualifying no matter what the consumer
20 says.

21 Q. But the purpose of that opportunity is to
22 prevent the adverse action. Could we agree to that?

23 MS. PASCHAL: Objection. Asked and answered.

24 A. It is to give the consumer an opportunity to
25 have a discussion with the employer about the results.

1 BY MR. SOUMILAS:

2 Q. And -- and sometimes that discussion doesn't
3 even have to be a dispute. It could just -- could be an
4 explanation, like, "Yeah. The information is correct,
5 but let me explain it to you. It might not really
6 affect my ability to -- to do this job"; is that
7 correct?

8 A. I would agree with that.

9 Q. And, then, obviously, if the consumer has a
10 copy of the report and the identity of the background
11 screener, they also have a -- a second opportunity to
12 actually dispute any information that's inaccurate or
13 incomplete and get it removed from that background
14 report?

15 MS. PASCHAL: Objection. Compound and also
16 foundation. Calls for speculation.

17 BY MR. SOUMILAS:

18 Q. Would you agree that that's also part of the
19 opportunity provided by the pre-adverse action notice
20 requirements and employment screening?

21 A. Yes. Although, consumers don't have to wait to
22 get a copy of their report to dispute information in
23 their report.

24 Q. Of course, you work in -- with consumer
25 reporting agencies; right?

1 A. Yes.

2 Q. And you know that sometimes not all of the
3 information in a particular consumer report sent to a
4 third party is identical with what may be on the file
5 with a particular consumer reporting agency?

6 A. I suppose in the abstract that may be true.
7 I'm -- I'm not sure of the kinds of facts. If you're
8 talking about "I've sent a report. Now information has
9 changed, so any information I have in my file" --

10 Let's use the credit reporting system as an
11 example. You've paid something off or a balance has
12 been reduced, the information in the file may be
13 different than what was produced in a report two weeks
14 ago, for example.

15 Q. No, that's not what I'm talking about. Let's
16 stick to the example you gave, though.

17 So I'm talking about a credit report where on
18 the same day I ask for a copy of my report from, say,
19 TransUnion, and the same day TransUnion sold my report
20 to a third party, but the information that's disclosed
21 to me at home upon my request is not identical to that
22 particular report sold to a third party because of a
23 misfile or some other error in their report as its
24 prepared and delivered to a third party.

25 That happens; right?

1 A. That does happen.

2 Q. The fact that I might be proactive enough to
3 get a copy of my consumer report ahead of time is no
4 guarantee that I'm going to be looking at the same thing
5 as a third party is looking at in my consumer report?

6 A. Yes. But that's not the example that I was
7 trying to explain.

8 So what I was mentioning is if a consumer,
9 let's say, for example, is discussing an opportunity and
10 the employer says, "I've got a background check here
11 that says you've been convicted of a felony in
12 Illinois."

13 And the consumer says, "Well, That's not
14 right."

15 They have the opportunity to pick up the phone
16 then and call the background screening company who
17 prepared that report and dispute those results without
18 requiring them to get a copy of that report.

19 That's what I was trying to explain.

20 Q. Okay. But in the -- that scenario that you
21 gave, the background report would have already been
22 prepared and delivered to the employer?

23 A. That -- that's correct. What I was speaking
24 about is the situation that the legal folks had
25 mentioned where they review a report and there's

1 additional information or they want to talk to the
2 consumer about it and seek information -- additional
3 information, more information.

4 Q. All right. And then, again, when you're
5 referring to "legal folks," it's Ms. Cattani and
6 Mr. Mawla, who you interviewed on December 28th, 2023?

7 A. That's correct.

8 Q. But you agree with me that companies like GIS,
9 they don't have files of consumers in advance of
10 preparing an employment background report; correct?

11 A. Some background -- sorry, there's an echo.

12 Some background screening companies do. Some
13 don't. It depends on how they construct their reports.

14 Q. Do you know whether GIS does?

15 A. It's my understanding that GIS obtains
16 information in connection with the preparation of a
17 specific report when it's requested to do so.

18 Q. Right. So if -- let's say I'm a job candidate
19 for RHI and I went to GIS proactively on my own, and I
20 said, you know, "I want to see my background report
21 before I even apply. I'm -- I'm a little worried, and I
22 want to make sure everything is okay." There wouldn't
23 be any background report prepared for me to see; right?

24 A. I don't know that one way or the other, sir.

25 Q. Okay. Do you think that GIS has background

1 reports pre-prepared for applicants before it actually
2 puts them together and delivers them to customers like
3 RHI?

4 A. I --

5 MS. PASCHAL: Objection. Calls for
6 speculation. And foundation.

7 A. I have no knowledge of GIS's disclosure
8 procedures, whether they obtain information upon a
9 consumer's request or not. Different companies request
10 different things.

11 BY MR. SOUMILAS:

12 Q. All right. With respect to the -- Ms. Magallon
13 and the class here, do you know whether any of them had
14 actual copies of their GIS reports from any source by
15 the time RHI made the determination to put them into
16 legal review?

17 A. I have no knowledge one way or the other.

18 Q. Do you have any knowledge as to whether
19 Ms. Magallon or any member of the class had seen a copy
20 of their GIS report at any point from the beginning
21 through the end of the legal review process when they
22 were found not placeable?

23 A. I have no knowledge one way or the other.

24 Q. All right.

25 MR. SOUMILAS: Let's take a -- another short

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1 break at the point. Let's go off the record.

2 THE VIDEOGRAPHER: All right. We are off the
3 record, 12:39 Eastern.

4 (Break.)

5 THE VIDEOGRAPHER: Back on the record, 12:50
6 Eastern.

7 MR. SOUMILAS: All right, Ms. Kuehn, thanks for
8 the opportunity to review my notes. I -- I think that's
9 enough for one day. I -- I don't have anything further.
10 I'm prepared to close the record.

11 I would like Exhibits Kuehn 1 through 4
12 attached to this transcript, please.

13 MS. PASCHAL: Thank you, Counsel. I have a
14 couple follow-ups. Could we go off the record for
15 another two minutes, and I think I could do a very quick
16 follow-up, if you will indulge me for two minutes.

17 MR. SOUMILAS: Sure.

18 MS. PASCHAL: Okay. Thank you.

19 THE VIDEOGRAPHER: Off the record, 12:51
20 Eastern.

21 (Break.)

22 THE VIDEOGRAPHER: Back on the record, 12:54
23 Eastern.

24

25

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1 EXAMINATION

2 BY MS. PASCHAL:

3 Q. Hello, Ms. Kuehn. I just had a few questions
4 about the questions that Mr. Soumilas asked you.

5 Ms. Kuehn, did you receive a document request
6 or subpoena in connection with your testimony today?

7 A. I did not.

8 Q. You were asked some questions about what's
9 called a "class" that was put together in this case.

10 Do you remember those questions?

11 A. I do.

12 Q. Was that process of putting together the class
13 relevant in any way to your opinions in your reports?

14 A. It was not.

15 Q. You were also asked -- or Mr. Soumilas
16 referenced materials that were exchanged between the
17 parties as part of the process of compiling the class.

18 Do you remember those questions?

19 A. I do.

20 Q. With materials that go to who's in the class or
21 not -- not in the class affect the opinions that you
22 expressed in your reports?

23 A. They would not.

24 Q. You were asked at one point to assume that
25 Robert Half did not send out the pre-adverse action

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1 package 90 percent of the time, and if so, would that
2 practice comply with FCRA?

3 Do you remember that question?

4 A. Yes.

5 Q. Did you see anything in the materials you
6 reviewed indicating that Robert Half did not send out
7 pre-adverse action packages 90 percent of the time?

8 A. I did not.

9 Q. Do you have any reason, even beyond the
10 materials that you reviewed, to think that Robert Half
11 did not send out materials 90 percent of the time?

12 MR. SOUMILAS: Objection to the form.

13 You could answer it.

14 A. I do not.

15 MS. PASCHAL: Those are all the questions I
16 have at this time.

17 Thank you, Ms. Kuehn.

18 MR. SOUMILAS: All right. Well, let's close
19 this record. Thank you, everybody.

20 MS. PASCHAL: Just one -- one thing. I'm
21 sorry, John. I want to instruct the witness for reading
22 and signing the deposition after receiving a copy.

23 MR. SOUMILAS: All right. Sounds good.

24 THE VIDEOGRAPHER: All right. So this
25 concludes today's deposition. We're off the record,

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1 12:57 Eastern, 5:57 p.m. UTC. Thank you.

2 (Deposition concluded at 12:57 Eastern.)

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CERTIFICATE OF REPORTER

I, Taylor Smith, Notary Public of the Commonwealth of Virginia, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn by me.

I further certify that the examination was recorded stenographically by me via videoconferencing platform and that this transcript is a true record of the proceedings.

I further certify that I am neither counsel for, related to, nor employed by any of the parties, nor financially or otherwise interested in the outcome of the action.

Certified to by me this 9th of March, 2024.



Notary public in and for
the Commonwealth of Virginia
My commission expires
December 31, 2026

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